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Presidential Documents

Title 3—

The President

Proclamation 9775 of August 27, 2018

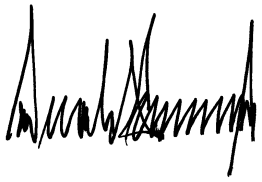
Death of Senator John Sidney McCain III

By the President of the United States of America

A Proclamation

As a mark of respect for the memory and longstanding service of Senator John Sidney McCain III, I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, on the day of interment. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of August, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1409

RIN 0560–AI42

Market Facilitation Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing a new regulation to implement the Market Facilitation Program (MFP). MFP provides payments to producers with commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. This rule specifies the eligibility requirements, payment calculations, and application procedures for MFP. The details for specific commodities and the relevant application start dates will be announced in subsequent notices of funds availability (NOFAs).

DATES: *Effective:* August 30, 2018.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Acting Deputy Administrator for Farm Programs, telephone: (202) 720–3175. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The imposition of tariffs by other countries on U.S. agricultural products, among other actions, are disrupting marketing of agricultural commodities and are outside of the control of the agricultural producers who are being negatively impacted. In response to the actions of foreign governments, the President has pledged that up to $12 billion in financial assistance will be made available for certain agricultural commodities under section 5 of the CCC Charter Act (15 U.S.C. 714c). This section authorizes CCC to assist in the disposition of surplus commodities and to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

MFP payments constitute one portion of up to $12 billion in financial assistance to farmers. The MFP payments will aid producers in the disposition of surplus commodities and aid in the expansion of domestic markets or aid in the development of new and additional markets and uses for the specific crops or commodities that are negatively impacted by actions of foreign governments. The MFP payments will provide producers with financial assistance that gives them the ability to absorb some of the additional costs from having to delay or reorient marketing of the new crop due to the tariff retaliation. The determination of commodities that are included in MFP and specific program requirements applicable to the commodities, such as enrollment periods, will be announced in the applicable NOFAs published in the **Federal Register**.

The Farm Service Agency (FSA) will administer MFP on behalf of CCC.

MFP Description

MFP is a temporary assistance program to producers of covered agricultural commodities. MFP will be available to producers of those commodities determined by the Secretary to have been adversely affected by the actions of foreign governments.

MFP payment rates and units of measure will be in effect beginning September 4, 2018. The payment rate under this rule will apply to the first 50 percent of the producer's total production of the selected commodity. On or about December 3, 2018, CCC may announce a second payment rate, if applicable, that will apply to the remaining 50 percent of the producer's production for the selected commodity. USDA will continue to monitor the situation with respect to adverse effects felt by American commodity producers as a result of trade disruptions and will determine whether additional assistance is necessary at a later date, considering additional available data and updated methodologies. The MFP payment under this announcement is expected to total about $5 billion.

Producer Eligibility Requirements

Under MFP, CCC will provide payments to producers of those commodities determined by the Secretary to have been adversely affected by the retaliatory actions of foreign governments. Participation in other CCC programs is not a prerequisite to participate in MFP.

MFP payments will be available to those producers who had an ownership interest in the crop on acres that were planted and reported to FSA for the 2018 crop year. Producers who reported such an interest are eligible for MFP payments, provided all other eligibility requirements are met. A verbal or written agreement that precludes a producer from having such an interest may disqualify the producer for MFP.

Crop producers must meet all of the following requirements to be eligible for an MFP payment:

(1) The producer must have submitted to FSA a form FSA–578, ''Report of Acreage'' (referred to as ''acreage report''), representing the applicable crop year acreage of the eligible crop as planted, and provide FSA with supporting documentation, as required by the applicable NOFA. For any producer who is not participating in another FSA-administered CCC program, the producer must provide the required crop planting information on the acreage report. If the acreage report deadline for the eligible crop has passed, the producer will follow the established ''late-filed'' acreage reports process;

(2) The producer's acreage report must specify the producer's ownership share of both the eligible crop and the number of acres planted to that crop; and

(3) The producer must apply for an MFP payment as announced by CCC.

Payments for commodities other than crops, such as livestock and dairy, will be based on information submitted by producers to FSA as specified in the applicable NOFA. MFP payments will be available to those producers who had an ownership interest in the commodity during the applicable time period, provided all other eligibility requirements are met.

Producers of commodities other than crops must meet all of the following requirements to be eligible for an MFP payment:

(1) The producer must complete an MFP application form and provide FSA with supporting documentation, as required by the applicable NOFA, which must specify the producer's ownership interest in the eligible commodity and the amount of the commodity for the applicable time period; and

(2) The producer must have ownership in the commodity as described in the applicable NOFA.

Adjusted Gross Income and Payment Limitation Requirements

The average adjusted gross income (AGI) limitations as specified in 7 CFR part 1400 apply to MFP. No person or legal entity (excluding a joint venture or general partnership), as defined and determined under 7 CFR part 1400 may receive, directly or indirectly, more than $125,000 in MFP payments for the 2018 crop year as specified in the relevant NOFA. The application of the payment limitation will be specified in the NOFA. For example, certain commodities announced at the same time may have a combined payment limitation.

For the $125,000 annual payment limit, both indirect and direct benefits are counted by attribution. The regulations in 7 CFR 1400.105 specify how payments are attributed; the total amount of payments is attributed to a person by taking into account the direct and indirect ownership interests of the person in a legal entity that is eligible to receive payments. In the case of a legal entity, the same payment is attributed to the direct payee in the full amount and to those that have an indirect interest to the amount of that indirect interest.

A person or legal entity is ineligible for payments if the person's or legal entity's AGI for the applicable program year is more than $900,000. If a person with an indirect interest in a legal entity has an average AGI of more than $900,000, the MFP payments subject to average AGI compliance provisions to the legal entity will be reduced as calculated based on the percent interest of the person in the legal entity receiving the payment. The relevant years used to calculate average AGI are the 3 consecutive tax years immediately preceding the year before the payment year, which will be the crop year, or the marketing year for livestock or dairy). For example, for 2018, the relevant years to calculate AGI are the 2014, 2015 and 2016 tax years.

In addition to having a share in the commodity, to be eligible for an MFP payment for crops that are ''covered commodities'' as defined in 7 CFR 1412.3, each applicant is required to be a person or legal entity who was actively engaged in farming, as provided in 7 CFR part 1400, in the crop year for which the crop is included in MFP.

Payment Calculations

Subject to any unique circumstance applicable to a specific commodity as specified in the applicable NOFA, the MFP payment for a commodity will be calculated as follows:

Production × Share × MFP Payment Rate

The share is the applicant's share of the commodity.

The MFP payment rate will be calculated for the specific commodity when it becomes eligible for MFP and will be announced in the applicable NOFA.

The amount of production is the applicant's actual production for the commodity. Specific production requirements for any commodity will be identified in the relevant NOFA. For example, for livestock, production may be the number of head of livestock during specified dates.

MFP General Requirements

General requirements that apply to other CCC programs also apply to MFP including compliance with the provisions of 7 CFR part 12, ''Highly Erodible Land and Wetland Conservation,'' during the year for which assistance is made available.

Foreign persons are not eligible for MFP payments. Federal, State, and local governments are not eligible for MFP payments.

There is no requirement to have crop insurance coverage or coverage under the Noninsured Crop Disaster Assistance Program (NAP) to be eligible for participation in MFP.

Appeal regulations specified in 7 CFR parts 11 and 780 apply. MFP commodity eligibility and other matters of general applicability that are not in response to, or result from, an individual set of facts in an individual participant's application for payment are not matters that can be appealed.

Eligible Crop Acreage

Most eligible crop producers will have already submitted the required acreage report to FSA as part of their participation in various FSA and CCC programs. The regulation in 7 CFR part 718 requires producers to report to FSA their acreage for various crops and commodities, including the number of acres that were planted in the United States for the crop or commodity and their percentage share of the crop for the reported acreage for the crop year. Therefore, FSA already has some of the information relevant to MFP as previously reported to FSA for many producers; as noted above other producers who apply for MFP will also need to submit their information on the acreage report.

If there were any errors in the previously submitted acreage report, the producer may go through the established FSA process to correct the reported information. Any such requests for correction must be made by the date specified in the relevant NOFA and require approval by FSA.

Application Process

To apply for MFP, each applicant must submit a complete valid MFP application either in person, by mail, email, or facsimile to an FSA county office. For many crops, FSA possesses the producer share data from the applicable crop year's acreage report for producers who participate in other FSA-administered CCC programs. For crops, the applicant's crop share interest on an MFP application cannot be greater than the crop share interest as reported on the acreage report. FSA will verify and confirm the applicant's crop share interest reported on the MFP application by comparing it to the applicant's crop share interest as reported on that farm's acreage report for the applicable crop year.

For livestock, the application will include number of head (production) and ownership share information as provided in the applicable NOFA. For dairy, the application will include the amount of historical production as provided in the applicable NOFA.

If FSA decides it is necessary to confirm the applicant's interest in the commodity, the applicant will be required to submit evidence upon request, such as seed receipts, custom harvesting receipts, bale gin lists, or purchase or sales receipts. In addition, the applicant will need to provide supporting documentation for the amount of production as specified in the relevant NOFA.

Process for Evaluation of MFP Applications and Approval of Payments

FSA will require producer specific documentation of the amount of production, as applicable.

When there are multiple eligible applicants for a farm, FSA will approve each application that is filed for MFP when all the following have occurred:

(1) The landlord, tenant, and sharecropper have signed and submitted their own MFP application with the correct share interest in the crop, livestock, or dairy production on the farm; and

(2) The applicant provided a copy of the lease agreement, if determined necessary and requested by the FSA county committee.

Provisions Requiring Refund to CCC

In the event that any application for an MFP payment resulted from erroneous information reported by the producer, the payment will be recalculated, and the participant must refund any excess payment to CCC; if the error was the applicant's error, the refund must include interest to be calculated from the date of the disbursement to the MFP participant. If, for whatever reason, FSA determines that the applicant misrepresented either the total amount or producer's share of the crop, head of livestock, or production, or if the MFP payment would exceed the participant's payment based on correct amount of production and share, the application will be disapproved and the full MFP payment for that crop or livestock for that participant will be required to be refunded to CCC with interest from the date of disbursement. If any corrections to the ownership interest in the crop are made to the acreage report after the MFP application deadline, and would have resulted in a lower MFP payment, the applicant will be required to refund the difference with interest from date of disbursement.

Effective Date and Notice and Comment

The Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to grants or benefits. This rule governs the program for payments to certain commodity producers and thus falls within that exemption. Accordingly, this rule is effective upon publication in the **Federal Register**. Further, the opportunity for notice and comment provided in this document is limited to the PRA requirements for the information collection activities.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on *regulations.gov.*

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. The OMB guidance in M–17–21, dated April 5, 2017, specifies that ''transfer rules'' are not covered by Executive Order 13771. Transfer rules are Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries. Therefore, this is considered a transfer rule by OMB and is not covered by Executive Order 13771.

Cost Benefit Analysis Summary

The amount of MFP payments for each commodity is intended to offset some of the adverse impact of losing market demand due to trade issues, for example, retaliatory tariffs imposed by other countries. The payment rate per unit (for example, bushel, pound, hundredweight, or animal) for each commodity will reflect the severity of the impact of trade disruptions to that commodity and the commodity-specific period of adjustment to new trade patterns. For example, the payment rate for a commodity that is heavily dependent on export markets, such as soybeans, will be higher than a commodity for which most production is marketed domestically. USDA forecasted those impacts based on the percentage of 2017 U.S. production of each commodity that was exported in 2017, the share of exports affected by trade disruptions, and other variables such as current stocks-to-use ratio for crop commodities.

The expected cost of initial MFP payments is approximately $5 billion. The majority of payments will go to soybean producers, because USDA has determined that soybeans have been most severely impacted by recent trade actions based on analysis of exports as a share of total production, the time it will take to adjust to new trade patterns, the observed price impact, and the current stocks-to-use ratio. The payments represent the total benefits (payments) to producers, which is the total cost to the government for MFP.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799).

While OMB has designated this rule as ''economically significant'' under Executive Order 12866, ''. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement'' (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. As previously stated, the intent of MFP is to compensate producers who have suffered post-production market losses. The limited discretionary aspects of MFP (for example, determining AGI and payment limitations) were designed to be consistent with established FSA and CCC programs. These discretionary aspects do not have the potential to impact the human environment as they are administrative, and MFP only takes effect after the commodity has been produced, harvested, and sold.

Accordingly, the following Categorical Exclusions in 7 CFR part 799.31 apply: § 799.31(b)(6)(iii) applies to financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost and supply of such commodities; § 799.31(b)(6)(iv) applies to individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation; and § 799.31(b)(6)(vi) applies to ''safety net'' programs administered by FSA. No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of MFP and the participation in MFP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, CCC will not prepare an environmental assessment or environmental impact statement for this regulatory action and this rule serves as documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affect by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes.

FSA and CCC have assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FSA and CCC will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA

This rule is a major rule under SBREFA. SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. The beneficiaries of this rule have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. Therefore, FSA and CCC find that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation of MFP. The regulation needs to be effective to provide adequate time for producers to submit applications to request payments. Therefore, this rule is effective on the August 30, 2018.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is TBD—Market Facilitation Program and number.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports MFP was submitted to OMB for emergency approval. OMB approved the 6-month emergency information collection.

List of Subjects in 7 CFR Part 1409

Agriculture, Agricultural commodities, Crops, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, CCC adds 7 CFR part 1409 to read as follows:

PART 1409—MARKET FACILITATION PROGRAM

Sec.

Authority: 15 U.S.C. 714b and 714c.

§ 1409.1 Applicability.

This part specifies the eligibility requirements and payment calculations for the Market Facilitation Program (MFP). MFP will provide payments with

respect to commodities which have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. The determination of eligible commodities and any specific program requirements for a commodity will be specified in a notice of funding availability published by CCC in the **Federal Register**.

§ 1409.2 Definitions.

The following definitions apply to MFP. The definitions in part 718 of this title and parts 1400, and 1421 of this section apply, except where they conflict with the definitions in this section.

Application means the MFP application form.

Commodity means an agricultural commodity produced in the United States intended to be marketed for commercial production that has been designated as eligible for payments under MFP.

Crop means the harvested production of a commodity.

Crop year means:

(1) For insurable crops, the crop year as defined according to the applicable crop insurance policy; and

(2) For NAP covered crops, the crop year as provided in part 1437 of this chapter.

NOFA means a notice of funds availability published by CCC in the **Federal Register** that specifies terms and conditions of MFP that are applicable to a specific commodity.

Producer means a livestock producer, dairy producer, or a producer of a crop as defined in § 718.2 of this title.

§ 1409.3 Producer eligibility requirements.

(a) To be eligible for an MFP payment, a producer must:

(1) Meet all of the requirements in this part and the NOFA that is applicable to the commodity;

(2) Be a:

(i) Citizen of the United States;

(ii) Resident alien, which for purposes of this part means ''lawful alien'' as defined in part 1400 of this chapter;

(iii) Partnership of citizens of the United States; or

(iv) Corporation, limited liability corporation, or other organizational structure organized under State law;

(3) Have an ownership interest in the commodity.

(b) For eligible crops, a producer's share in the crop must be reported for the applicable crop year on form FSA–578, Report of Acreage, on file in the FSA county office as of the acreage reporting deadline, or no later than the date specified in the relevant NOFA. For crops that are covered commodities under § 1412.3 of this chapter, each applicant must be a person or legal entity who was actively engaged in farming, as provided in part 1400 of this chapter, in the crop year for which the crop is included in MFP.

(c) For livestock and dairy, a producer must have had an ownership interest in livestock or dairy production during the applicable time period established by CCC in the applicable NOFA.

§ 1409.4 Method of application.

(a) To apply for an MFP payment, the producer must submit an MFP application on the form designated by CCC to an FSA county office.

(b) In the event that the producer does not submit documentation in response to any request of FSA to support the producer's application or documentation furnished does not show the producer had ownership in the commodity as claimed, the application for that commodity will be disapproved.

(c) A request for an MFP payment will not be approved by CCC until all the applicable eligibility provisions have been met and the producer has submitted all required forms and supporting documentation. In addition to the completed application form, if the following forms and documentation are not on file in the FSA county office or are not current for the applicable crop year of the crop or applicable year for the commodity for which MFP has been announced as available, the producer must also submit:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this chapter;

(2) An average adjusted gross income statement for the applicable year entity as provided in part 1400 of this chapter;

(3) A highly erodible land conservation (sometimes referred to elsewhere as HELC) and wetland conservation certification as provided in part 12 of this title;

(4) For crops, an acreage report for the applicable crop year as provided in part 718 of this title; and

(5) Verifiable records that substantiate the amount of production as specified in the relevant NOFA.

§ 1409.5 Calculation of payments.

The payment under this rule will be calculated by multiplying fifty percent of the total production of the commodity times the MFP payment rate for that commodity that is in effect when the payment is made times the producer's eligible share of the commodity. On or about December 3, 2018, CCC may announce a second payment rate, if applicable, that will apply to the remaining 50 percent of the producer's production for the selected commodity.

§ 1409.6 Eligibility subject to verification.

(a) Producers who are approved for participation in MFP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Producers must submit documentation to CCC as requested to substantiate an application.

(c) Producers receiving payments or any other person who furnishes such information to CCC must permit authorized representatives of USDA or the General Accounting Office during regular business hours to inspect, examine, and to allow such representatives to make copies of such books, records or other items for the purpose of confirming the accuracy of the information provided by the producer.

§ 1409.7 Miscellaneous provisions.

(a) If an MFP payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment to CCC with interest calculated from the date of the disbursement of the payment.

(b) The refund of any payment to CCC is in addition to liability under any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(c) The regulations in parts 11 and 780 of this title apply to determinations under this part.

(d) Any payment under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity.

(e) The $900,000 average AGI limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for MFP. The average AGI will be calculated for a person or legal entity based on the 3 complete tax years that precede the year for which the payment is made (for the 2018 crop year or marketing year for livestock and dairy the tax years are 2014, 2015, and 2016).

(f) No person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this chapter may receive, directly or indirectly, more than $125,000 in payments as specified in the relevant NOFA.

(g) The direct attribution provisions in part 1400 of this chapter apply to MFP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. If anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a producer to directly receive an MFP payment, then the MFP payment to the actual payee will be reduced commensurately with that interest.

(h) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), CCC waives the restriction on receipt of funds under MFP but only as to beneficiaries who, as a condition of such waiver, agree to apply the MFP payments to reduce the amount of the judgment lien.

(i) The provisions of § 718.304 of this title, ''Failure to Fully Comply,'' do not apply to this part.

Richard Fordyce,

Administrator, Farm Service Agency.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2018–18842 Filed 8–28–18; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1489

RIN 0551–AA92

Agricultural Trade Promotion Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing a new regulation to implement the Agricultural Trade Promotion Program (ATP). The ATP provides assistance to U.S. agricultural industries to conduct activities that promote U.S. agricultural commodities in foreign markets for commodities impacted by tariffs, including activities that address existing or potential non-tariff barriers to trade. This rule specifies, among other things, eligibility requirements, activities eligible for reimbursement, contribution requirements, and application procedures for the ATP. This rule also proposes a new information collection for required program information. Specific program requirements will be set forth in future Notices of Funds Availability (NOFAs) announced through the *Grants.gov* website.

DATES:

Effective date: August 30, 2018.

Comment date: We will consider comments on the Paperwork Reduction Act (PRA) that we receive by: October 29, 2018.

ADDRESSES: We invite you to submit comments as required by the PRA for the information collection activities. In your comment, specify RIN 0551–NEW, and include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: podadmin@fas.usda.gov.*
- *Fax:* (202) 720–9361.
- *Mail or Courier Service:* Director, Program Operations Division, OTP/FAS, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 6512, Stop 1020, Washington, DC 20250–1020.

Comments will be available for viewing online at *http://www.regulations.gov.* In addition, comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Curt Alt, Director, Program Operations Division, by telephone: (202) 720–4327; or by fax: (202) 720–9361; or by email: *podadmin@fas.usda.gov.*

The U.S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, sexual orientation, age, disability, political beliefs and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (Voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The nature and severity of financial impacts of recent international trade actions (for example, the imposition of tariffs by other countries on U.S. agricultural products) are disrupting the marketing of U.S. agricultural commodities and are outside of the control of the industries that are being negatively affected. In response to these actions by foreign governments, the Commodity Credit Corporation (CCC) has decided to exercise its authority under Section 5 of the CCC Charter Act, which includes authority for CCC to use its general powers to ''aid in the development of foreign markets for . . . agricultural commodities . . . .'' [15 U.S.C. 714c(f)], to provide assistance to eligible organizations for market promotion activities. ATP funding is intended to ameliorate the negative impacts of recent international trade actions on U.S. agriculture by developing, maintaining, and expanding commercial export markets for U.S. agricultural commodities and products. ATP Participants may receive assistance for either generic or branded promotion activities as well as assistance to conduct activities to address existing or potential non-tariff barriers to trade.

The Foreign Agricultural Service (FAS) will administer the ATP on behalf of the CCC. Specific program requirements and details for applying for assistance under the ATP will be set forth in future NOFAs announced through the *Grants.gov* website.

Eligible Organizations

The ATP is a cost-share program that is designed to reimburse nonprofit U.S. agricultural trade organizations, nonprofit state regional trade groups, state agencies, U.S. agricultural cooperatives, and other entities that conduct approved foreign market promotion activities and can demonstrate damages suffered as a result of tariffs imposed on U.S. agricultural products in 2018/2019. When considering eligible nonprofit U.S. trade organizations, the CCC gives priority to organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted. Eligible activities can be generic or branded in nature. In order to be eligible for ATP assistance, U.S. for-profit entities shall be limited to those whose size does not exceed 300 percent of the small business size standards established for their particular industry and published at 13 CFR part 121, Small Business Size Regulations. Eligible for-profit entities may participate in an ATP Participant's brand promotion program. Any ATP Participant that operates a brand promotion program will be required to establish brand program operational

procedures. An ATP Participant shall publicize its ATP program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of State Regional Trade Groups (SRTGs), throughout the corresponding region.

General Provisions

The Unified Export Strategy (UES) internet-based system will be used to receive ATP applications and to receive reimbursement requests from ATP Participants. This is the system that the CCC uses for applications to and reimbursement requests under similar CCC programs, including the Market Access Program (MAP), the Foreign Market Development Cooperator Program (FMD), the Emerging Markets Program (EMP), the Technical Assistance for Specialty Crops Program (TASC), and the Quality Samples Program (QSP). Any eligible organization that applied for the 2019 MAP and FMD will be able to add application information specific to the ATP to its existing 2019 UES submission. Details about this process will be announced in the ATP NOFAs.

Information required in an applicant's application are detailed in the regulation and include, among other things, a program justification describing the current market situation and a strategic plan that describes all proposed activities and how they will help accomplish the applicant's objective to increase exports and develop access to new markets. The CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for developing, maintaining, or expanding export markets for U.S. agricultural commodities.

Participants in the ATP will be required to contribute a total amount in goods, services, and/or cash equal to at least 10 percent of the value of resources to be provided by the CCC for all generic promotion activities proposed to be undertaken by the ATP Participant. Branded participants will also be required to contribute in goods, services, and/or cash equal to at least 50 percent of all brand promotion activities they undertake under the ATP.

Lists of expenses eligible and ineligible for reimbursement under the ATP are also included in the regulation. Procedures for requesting reimbursement for eligible expenditures, or, if appropriate, for advances of program funds, are described in the regulation. Because it is critical that program funds are managed and accounted for properly, and focused on achieving results, paragraphs regarding financial management, reporting on outcomes that tie assistance directly to increased trade, evaluation, compliance review, and ethical conduct are included. Finally, to ensure that funds provided under the ATP are expended in a cost-effective manner and protected from fraud, provisions regarding contracting and anti-fraud requirements are delineated in the regulation.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides that notice and comment and a 30-day delay in the effective date of the rule are not required when the rule involves specified actions, including matters relating to grants or benefits. This rule establishes procedures and conditions related to the provision of assistance to entities conducting activities that promote U.S. agricultural commodities in foreign markets and thus falls within that exemption. Accordingly, this rule is effective upon publication in the **Federal Register**. Further, the opportunity for notice and comment provided in this document is limited to the PRA requirements for the information collection activities.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. This rule is considered an E.O. 13771 regulatory action. The $200 million upfront cost, when annualized over a perpetual time horizon and discounted back to its 2016 equivalent using a 7 percent discount rate, is approximately $11 million.

Cost Benefit Analysis Summary

The ATP is a program to help U.S. organizations that promote the export of U.S. agricultural commodities adjust to changes in export markets due to recent trade disruptions by providing funding to modify promotional efforts in disrupted markets and to increase promotional efforts in undisrupted markets. Up to $200 million is available for assistance through the ATP.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because the CCC is not required by the Administrative Procedure Act or any other law to publish a proposed rule for this rulemaking.

Environmental Assessment

The CCC has determined that the ATP does not constitute a major State or Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347), no environmental assessment or environmental impact statement will be prepared for this regulatory action.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affect by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial

assistance and direct Federal development. For reasons specified in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 and this part must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes.

FAS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to the knowledge of FAS, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FAS will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under SBREFA. SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is TBD—Agricultural Trade Promotion Program and number.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA), the following new information collection request that supports ATP was submitted to OMB for emergency approval. OMB approved the 6-month emergency information collection. Since the information collection activities will continue for more than the approved 6 months, in addition, through this rule, the CCC is requesting comments from interested individuals and organizations on the information collection activities related to the ATP as described in this rule. Following the 60-day public comment period for this rule, the information collection request will be submitted to OMB for the 3-year approval to ensure adequate time for the information collection for the duration of the ATP.

Title: Agricultural Trade Promotion Program.

OMB Control Number: 0551–New.

Type of Request: New Collection.

Abstract: This information collection is required to support the regulation in 7 CFR part 1489 for the ATP. The primary objective of the ATP is to encourage and aid in the creation, maintenance, and expansion of commercial export markets for U.S. agricultural products through cost-share assistance to eligible organizations. The program is a cooperative effort between the CCC and the eligible organizations. Currently, FAS anticipates that about 70 organizations will participate directly in the program with activities in more than 100 countries.

Prior to initiating program activities, each ATP Participant must submit a detailed application to FAS which includes an assessment of overseas market potential; market or country strategies, constraints, goals, and benchmarks; proposed market promotion activities; estimated budgets; and a methodology to track program results (including performance measurement). Each Participant is also responsible for submitting: (1) Reimbursement claims for approved costs incurred in carrying out approved activities, (2) an end-of-year contribution report, (3) travel reports, and (4) progress reports/evaluation studies. Participants must maintain records on all information submitted to FAS. The information collected is used by FAS to manage, plan, evaluate, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds. For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 hours per response.

Respondents: Nonprofit agricultural trade organizations, state regional trade groups, agricultural cooperatives, state agencies, and commercial entities.

Estimated Number of Respondents: 70.

Estimated Number of Responses per Respondent: 60.

Estimated Total Annual Burden on Respondents: 63,000 hours.

FAS is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FAS, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FAS's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

List of Subjects in 7 CFR Part 1489

Agricultural commodities, Exports.

Accordingly, the CCC amends title 7 of the Code of Federal Regulations by adding part 1489 to read as follows:

PART 1489—AGRICULTURAL TRADE PROMOTION PROGRAM

Sec.

Authority: Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

§ 1489.10 General purpose and scope.

(a) This part sets forth the general terms, conditions, and policies governing the Commodity Credit Corporation's (CCC) operation of the Agricultural Trade Promotion Program (ATP). This program will provide assistance to eligible organizations to conduct market promotion activities, including activities to address existing or potential non-tariff barriers to trade, that promote U.S. agricultural commodities in foreign markets. Specific program requirements will be set forth in future Notices of Funds Availability announced through the *Grants.gov* website.

(b)(1) In addition to the provisions of this subpart, other regulations of general application issued by the U. S. Department of Agriculture (USDA), including the regulations set forth in Chapter XXX of this title, ''Office of the Chief Financial Officer, Department of Agriculture,'' may apply to the ATP and ATP participants, to the extent that these regulations of general application do not directly conflict with the provisions of this subpart. These include, but are not limited to:

(i) 7 CFR part 1, subpart A—Official Records.

(ii) 7 CFR part 3—Debt Management.

(iii) 7 CFR part 15, subpart A—Nondiscrimination.

(iv) 2 CFR part 417—Government-wide Debarment and Suspension (Non-procurement).

(v) 2 CFR part 418—New Restrictions on Lobbying.

(vi) 2 CFR part 421—Requirements for Drug-Free Workplace (Financial Assistance).

(vii) 48 CFR part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulations.

(2) In addition, relevant provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory provisions that are generally applicable to the CCC are also applicable to the ATP and the regulations set forth in this part.

(3) ATP Participants must also comply with Title VI of the Civil Rights Act of 1964 and related civil rights regulations and policies.

(4) Other laws and regulations that apply to the ATP and ATP Participants include, but are not limited to:

(i) 2 CFR part 25—Universal Identifier and Central Contractor Registration.

(ii) 2 CFR part 170—Reporting Subaward and Executive Compensation Information.

(iii) 2 CFR part 175—Award Term for Trafficking in Persons.

(iv) 2 CFR part 180—OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).

(v) 2 CFR part 200—Office of Management and Budget Guidance, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(vi) 2 CFR part 400—Department of Agriculture, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(vii) 37 CFR part 401.1—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.

(viii) Executive Order 13224, as amended, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism.

(c) Under the ATP, the CCC may provide multi-year grant assistance to eligible U.S. entities to conduct certain marketing and promotion activities, including activities to address existing or potential non-tariff trade barriers, aimed at developing, maintaining, or expanding commercial export markets for U.S. agricultural commodities. ATP Participants may receive assistance for either generic or brand promotion activities. While activities generally take place overseas, reimbursable activities may also take place in the United States. The CCC expects all activities that occur in the United States for which ATP reimbursement is sought to develop, maintain, or expand the commercial export market for the relevant U.S. agricultural commodity in accordance with the ATP Participant's approved ATP program. When considering eligible nonprofit U.S. trade organizations, the CCC gives priority to organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted.

(d) The ATP generally operates on a reimbursement basis.

(e) The CCC's policy is to ensure that benefits generated by ATP agreements are broadly available throughout the relevant agricultural sector and that no single entity gains an undue advantage. The CCC also endeavors to enter into ATP agreements covering a broad array of agricultural commodity sectors. The ATP is administered by personnel of the Foreign Agricultural Service (FAS) acting on behalf of the CCC.

§ 1489.11 Definitions.

For purposes of this subpart the following definitions apply:

Activity means a specific foreign market development effort undertaken by an ATP Participant.

Administrative expenses or costs means expenses or costs of administering, directing, and controlling an organization that is an ATP Participant. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to, rent,

office equipment, office supplies, office décor, office furniture, computer hardware and software, maintenance, extermination, parking, business cards);

(2) Personnel (including, but not limited to, salaries, benefits, payroll taxes, individual insurance, training);

(3) Communications (including, but not limited to, phone expenses, internet, mobile phones, personal digital assistants, email, mobile email devices, postage, courier services, television, radio, walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to, planning, supervision, supervisory travel, teambuilding, recruiting, hiring);

(5) Utilities (including, but not limited to, sewer, water, energy);

(6) Professional services (including, but not limited to, accounting expenses, financial services, investigatory services).

Approval letter means a document by which the CCC informs an applicant that its ATP application has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the program agreement. This letter requires a countersignature by the ATP Participant before it becomes effective.

ATP means the Agricultural Trade Promotion Program.

ATP Notice means Agricultural Trade Promotion Program notices are documents that CCC issues for informational purposes. These ATP notices are made available electronically at *www.fas.usda.gov/programs/agricultural-trade-promotion-program-atp.* These notices have no legal effect. They are intended to alert ATP Participants of various aspects of CCC's current administration of the ATP program. For example, CCC issues ATP notices to alert ATP Participants of procedures for requesting advances, applicable Federal pay scale rates, lists of economic and trade sanctions against certain foreign countries, reporting formats and computer codes to use with the UES.

ATP Participant or Participant means an entity that has entered into an ATP program agreement with the CCC.

Attaché/Counselor means the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Brand participant means a U.S. for-profit entity or a U.S. agricultural cooperative that owns the brand(s) of the U.S. agricultural commodity to be promoted or has the exclusive rights to use such brand(s) and that is participating in the ATP brand promotion program of an ATP Participant. This definition does not include any U.S. agricultural cooperatives that are ATP Participants that apply for ATP funds to implement their own brand programs.

Brand promotion means an activity that involves the exclusive or predominant use of a single U.S. company name, or the logo or brand name of a single U.S. company, or the brand of a U.S. agricultural cooperative, or any activity undertaken by a brand participant in the brand program.

CCC means the Commodity Credit Corporation, including any agency or official of the United States delegated the responsibility to act on behalf of the CCC.

Contribution means an expenditure made by an ATP Participant, the U.S. industry, or State agency in support of an approved activity. This includes expenditures to be made by entities in the ATP Participant's industry in support of the entities' related promotion activities in the markets covered by the ATP Participant's agreement.

Credit memo means a commercial document, also known as a credit memorandum, issued by the ATP Participant to a commercial entity that owes the ATP Participant a certain sum. A credit memo is used when the ATP Participant owes the commercial entity a sum less than the amount the entity owes the Participant. The credit memo reflects an offset of the amount the ATP Participant owes the entity against the amount the entity owes to the ATP Participant.

Demonstration projects means activities involving the erection or construction of a structure or facility or the installation of equipment.

Expenditure means either payment via the transfer of funds or offset reflected in a credit memo in lieu of a transfer of funds.

FAS means Foreign Agricultural Service, USDA.

FAS website means a website maintained by FAS providing information on ATP. It is currently accessible at *www.fas.usda.gov/programs/agricultural-trade-promotion-program-atp.*

Foreign third party means a foreign entity that an ATP Participant works with to promote the export of a U.S. agricultural commodity under the ATP program.

Generic promotion means an activity that is not a brand promotion but, rather, promotes a U.S. agricultural commodity generally. A generic promotion activity may include the promotion of a foreign brand (*i.e.,* a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market), if the foreign brand uses the promoted U.S. agricultural commodity from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos or brand names. However, in that case, the ATP Participant must ensure that all U.S. companies seeking to promote such U.S. agricultural commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (*i.e.,* a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

Market means the country or countries targeted by an activity.

Notification means a document from the ATP Participant by which the ATP Participant proposes to CCC changes to the activities and/or funding levels in an approved ATP program agreement and/or approval letter.

Product samples means a representative part of a larger whole promoted commodity or group of promoted commodities. Product samples include all forms of a promoted commodity (*e.g.,* fresh or processed), independent of the ultimate utilization of the sample. Product samples must be used in support of international marketing activities including, but not limited to, displays, food process testing, cooking demonstrations, or trade and consumer tastings.

Program agreement means a document entered into between CCC and an ATP Participant setting forth the terms and conditions of approved activities under ATP, including any subsequent amendments to such agreement.

Program period means a 12-month period during which an ATP Participant can undertake activities consistent with this subpart and its program agreement and approval letter with CCC. Program periods will begin on January 1 and end on December 31 of the same year, or begin on July 1 and end on June 30 of the subsequent year.

Promoted commodity means a U.S. agricultural commodity the sale of which is the intended result of a promotional activity.

Sales and trade relations expenditures (STRE) means expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous

courtesies such as checkroom fees, taxi fares and tips for approved activities; and decorations for a special promotional occasion that is part of an approved activity.

Sales team means a group of individuals engaged in an approved activity intended to result in specific sales.

Small-sized entity means a U.S. for-profit entity that meets the small business size standards published at 13 CFR part 121, Small Business Size Regulations.

SRTG means State Regional Trade Group. An SRTG is a nonprofit association of state-funded agricultural promotion agencies.

Temporary contractor means a contractor, typically a consultant or other highly paid professional that is hired on a short term basis to assist in the performance of an activity.

Trade team means a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

UES website means a website maintained by FAS through which applicants may apply online to ATP and any other USDA market development program. The website is currently accessible to persons with e-authentication certification at *https://apps.fas.usda.gov/ues/webapp/.*

Unified Export Strategy (UES) means a standardized online internet application developed by USDA and available for use by entities to apply to any USDA market development program, including the ATP.

U.S. agricultural commodity means any agricultural commodity, including any food, feed, fiber, forestry product, livestock, or insect of U.S. origin or fish harvested from a U.S. aquaculture farm or harvested by a vessel as defined in Title 46 of the United States Code, in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof, excluding tobacco. An agricultural commodity shall be considered to be U.S. origin if it is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

USDA means the United States Department of Agriculture.

U.S. for-profit entity means a firm, association, or other entity organized or incorporated, located and doing business for profit in the United States, and engaged in the export or sale of a U.S. agricultural commodity.

§ 1489.12 Participation eligibility.

To participate in the ATP as an ATP Participant, an entity shall be:

(a) A nonprofit U.S agricultural trade organization;

(b) A nonprofit SRTG;

(c) A U.S. agricultural cooperative; or

(d) A State agency.

§ 1489.13 Application process.

(a) *General application requirements.* CCC will periodically issue a Notice of Funds Availability through the *Grants.gov* website that it is accepting applications for participation in the ATP. Applications shall be submitted in accordance with the terms and requirements specified in the Notice and in these regulations. Applicants are encouraged to submit a UES through the UES internet website, but are not required to do so. Applicants may apply to conduct a generic promotion program and/or a brand promotion program that provides ATP funds to brand participants for branded promotion, as well as to conduct other market promotion activities including activities to address existing or potential non-tariff trade barriers. An applicant that is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program.

(1) *Applicant and program information.* All applications shall contain:

(i) The name, address, and internet location of the home page of the applicant organization;

(ii) The name of the applicant's Chief Executive Officer;

(iii) The name, telephone number, fax number, and email address of the applicant's primary contact person;

(iv) The name(s) of the person(s) responsible for managing the proposed program;

(v) A description of the applicant organization, including the type of organization of the applicant (*e.g.,* nonprofit SRTG), its mission, and the statutory authorities by which it is constituted and under which it operates, if applicable;

(vi) Tax exempt identification number of the applicant, if applicable;

(vii) Beginning and ending dates for proposed program period (mm/dd/yy–mm/dd/yy);

(viii) Dollar amount of CCC resources requested for generic activities;

(ix) Dollar amount of CCC resources requested for brand activities;

(x) Dollar amount of CCC resources requested for other market promotion activities, including activities to address existing or potential non-tariff trade barriers;

(xi) Total dollar amount of CCC resources requested;

(xii) Percentage of CCC resources requested for general administrative expenses;

(xiii) A Dun and Bradstreet DUNS number for the applicant;

(xiv) A description of the applicant organization's membership and membership criteria;

(xv) A list of organizations affiliated with the applicant, including parent organizations, subsidiaries, and partnerships;

(xvi) A description of the applicant's management and administrative capability;

(xvii) A description of the applicant's prior export promotion experience;

(xviii) Value, in U.S. dollars, of proposed contributions from the applicant or the applicant's proposed contribution stated as a percentage of the total dollar amount of CCC resources requested; and

(xix) Value, in U.S. dollars, of proposed contributions from other sources.

(2) *Program justification.* All applications shall contain:

(i) A description of the promoted U.S. agricultural commodity(s), its harmonized tariff classification, the applicable commodity aggregate code (available from the UES website) and the percentage of U.S. origin content by weight, exclusive of added water;

(ii) A description of the anticipated supply and demand situation for the promoted U.S. agricultural commodity(s) as well as a demonstration of loss suffered as a result of imposed tariffs (reduced sales, lost revenue, and decreased market share, etc.);

(iii) The volume and value of exports of the promoted U.S. agricultural commodity(s) to the targeted markets for the most recent 3-year period;

(iv) If the proposal is for 2 or more years, an explanation why the proposal should be funded on a multi-year basis; and

(v) A certification and, if requested by CCC, a written explanation supporting the certification that any funds received will supplement, but not supplant, any private or third-party funds or other contributions to program activities. An explanation, if one is requested, shall indicate why the applicant is unlikely to carry out the activities without Federal financial assistance. In determining whether Federal funds would supplement or supplant private or third-party funds or contributions, CCC will consider the applicant's prior overall marketing budget in CCC market development programs from year-to-year, variations in promotional

strategies within a country, and new markets.

(3) *Proposed program's strategic plan.* (i) All applications shall include a strategic plan that contains:

(A) A description of overall long term strategic goals to be advanced by the proposed activities for the ensuing 3–5 years;

(B) An explanation of the organization's strategic planning process and identification of priority target markets, including a summary of proposed budgets by country and commodity aggregate code;

(C) A description of the world market situation for the exported U.S. agricultural commodity(s);

(D) A description of competition from other exporters;

(E) An evaluation plan describing the applicant's goals and the applicant's plans for monitoring and evaluating performance towards achieving these goals. This evaluation plan should set forth specific goals and benchmarks set at regular intervals to be used to identify results against identified constraints and opportunities and to measure progress made in the target market. Evaluation of a proposed ATP program's effectiveness will depend on a clear statement by the applicant of goals, method of achievement, and expected results of programming at regular intervals. The overall goal of the ATP and of individual Participants' programming is to restore or increase sales that would not have occurred in the absence of ATP funding. An ATP Participant may modify and resubmit this plan for re-approval at any time during the program period.

(F) For each target country, five years or as many years as are available of:

(*1*) Historical U.S. export data;

(*2*) U.S. market share; and

(*3*) CCC market development program funds received by the applicant;

(G) For each target country, three years of projected U.S. export data and U.S. market share;

(H) Country strategy, including market constraint(s) impeding U.S. exports (*e.g.,* trade barriers) or opportunities present and the strategy proposed to overcome constraints or take advantage of the opportunities, previous activities in the country, and the projected impact of the proposed program on U.S. exports;

(I) A description of any demonstration projects, if applicable;

(J) Data summarizing the applicant's historical and projected exports, market share, and CCC market development program budgets of the promoted U.S. agricultural commodity(s);

(K) A written presentation of all proposed activities including:

(*1*) A short description of the relevant market constraint or opportunity;

(*2*) A budget for each proposed activity, identifying the source of funds.

(ii) Applications for brand promotion assistance shall also include in their strategic plans:

(A) A description of how the brand promotion program will be publicized to U.S. industry; and

(B) The criteria that will be used to allocate funds to U.S. for-profit entities and U.S. agricultural cooperatives.

(b) *Requests for addition evaluation information.* CCC may request any additional information that it deems necessary to evaluate an application, including, but not limited to, performance measurement information.

(c) *Special rules governing demonstration projects funded with CCC resources.* CCC will consider proposals for demonstration projects, provided:

(1) No more than one such demonstration project per constraint is undertaken within a market;

(2) The constraint to be addressed in the target market is a lack of technical knowledge or expertise;

(3) The demonstration project is a practical and cost effective method of overcoming the constraint; and

(4) A third-party must participate in such project through a written agreement with the ATP Participant.

(d) *Universal Identifier and Central Contractor Registration (CCR).* In accordance with 2 CFR part 25, each entity that applies to the ATP program and does not qualify for an exemption under 2 CFR 25.110 must:

(1) Be registered in the CCR prior to submitting an application or plan;

(2) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(3) Provide its DUNS number in each application or plan it submits to CCC.

(e) *Reporting Subaward and Executive Compensation Information.* In accordance with 2 CFR part 170, each entity that applies to the ATP program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive ATP funding.

§ 1489.14 Application review and formation of agreements.

(a) *General.* CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for developing, maintaining, or expanding export markets for U.S. agricultural commodities. The selection process, by its nature, involves the exercise of judgment. CCC's choice of Participants and proposed promotion projects requires that it consider and weigh a number of factors, some of which cannot be mathematically measured—*e.g.,* market opportunity, market strategy, and management capability. CCC may require that an applicant participate in the ATP through another ATP Participant.

(b) *Application review criteria.* In assessing the likelihood of success of the applications it receives and deciding which it will approve, CCC will follow results-oriented management principles and consider the following criteria:

(1) The effectiveness of program management;

(2) Soundness of accounting procedures;

(3) The nature of the applicant organization. With respect to nonprofit U.S. trade organizations, preference will be given to those organizations with the broadest base of producer representation of and affiliated industry participation for the commodity being promoted;

(4) Prior export promotion experience;

(5) Appropriateness of staffing;

(6) Adequacy of the applicant's strategic plan in the following categories:

(i) Description of target market conditions;

(ii) Description of and plan for addressing market constraints and opportunities;

(iii) Breadth of industry participation in strategic planning process;

(iv) Strategic prioritization identified in proposed plan;

(v) Export volume and value and market share goals in each target country;

(vi) Description of evaluation plan and suitability of the plan for performance measurement; and

(vii) Past CCC market development program results and/or evaluations, including program success stories.

(c) *Allocation factors.* CCC determines which applications to approve and develops preliminary recommended funding levels for each approved application based on the following factors, in addition to those in paragraph (b) of this section. CCC determines final funding levels after allocating available funds to approved applications on the basis of criteria that will be fully described in each program period's ATP Notice of Funds Availability announcement:

(1) Size of the budget request in relation to projected value of exports;

(2) Where applicable, size of the budget request in relation to actual value of exports in prior years;

(3) Where applicable, Participant's past projections of exports compared with actual exports;

(4) Level of contributions by the applicant and by all other sources to meet minimum cost share requirements;

(5) Market share goals in target country(ies);

(6) The percentage by weight, exclusive of added water, of U.S. agricultural commodities contained in the promoted products;

(7) The degree of value-added processing in the United States;

(8) Proposed ATP-funded general administrative and overhead costs compared to proposed ATP-funded direct promotional costs; and

(d) *Approval decision*—(1) *Approval criteria and factors.* CCC will approve those applications that it determines best satisfy the criteria and factors specified in paragraphs (b) and (c) of this section.

(2) *Notification of decision.* CCC will notify each applicant in writing of the final disposition of its application.

(e) *Formation of agreements.* CCC will send a program agreement (or amendment to an existing program agreement), an approval letter, and a signature card to each approved applicant. The program agreement or amendment and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to an ATP Participant's program, including any requirements with respect to contributions and program evaluations. An applicant that decides to accept the terms and conditions contained in the program agreement or amendment and the approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the program agreement or amendment and the approval letter and submit these to CCC. Final agreement shall occur when the program agreement or amendment and the approval letter are signed by both parties.

(f) *Signature cards.* The ATP Participant shall designate at least two individuals in its organization to sign program agreements and amendments, approval letters, reimbursement claims, and advance requests. The ATP Participant shall submit the signature card signed by those designated individuals and by the ATP Participant's CEO to CCC. The Participant shall immediately notify CCC of any changes in signatories and shall submit a revised signature card accordingly.

(g) *UES ID and passwords.* CCC will provide each ATP Participant with IDs and passwords for the UES website, as necessary. ATP Participants shall protect these IDs and passwords in accordance with USDA's information technology policies that CCC will provide to ATP Participants. ATP Participants shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information or a person who is not authorized gains such information.

(h) *Annual certifications.* An ATP Participant through which U.S. for-profit entities are participating in the ATP program shall obtain annual certifications from all such entities that certify their size or their status as U.S. agricultural cooperatives, as defined in these regulations. The Participant shall retain these certifications in accordance with the recordkeeping requirements of this part.

(i) *Changes to activities and funding*—(1) *Adding a new activity.* (i) An ATP Participant may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the ATP Participant shall submit a notification to CCC.

(ii) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description, the proposed budget, and a justification of transfer of funds.

(iii) After receipt of the notification, CCC will inform the ATP Participant via the UES website whether the requested budget is approved.

(2) *Modifying existing activities and their funding levels.* (i) An ATP Participant desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than $25,000 or 25 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(ii) An ATP Participant may make significant adjustments below that threshold to the funding levels for existing, approved activities without prior notification to CCC, only if it submits a notification explaining the adjustments to CCC no later than 30 days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(iii) Notifications shall describe the activity, changes to the activity, the existing funding level, the proposed funding level, and a justification for transfer of funds, if applicable.

§ 1489.15 Operational procedures for brand programs.

(a) Where CCC approves an application by an ATP Participant to run a brand promotion program that will include brand participants, the ATP Participant shall establish brand program operational procedures. The ATP Participant shall submit to CCC for approval its proposed brand program operational procedures. CCC will notify all ATP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of brand program operation procedures. Such procedures shall include, at a minimum, a brand program application, application procedures, application review criteria, brand participant eligibility requirements, a participation agreement, reimbursement requirements, compliance requirements, reporting and recordkeeping requirements, employment practices, financial management requirements, contracting procedures, and evaluation requirements. The ATP Participant must submit to CCC for approval any proposed changes to already approved brand program operational procedures before implementing such proposed changes.

(b) The ATP Participant shall not enter into any participation agreements with brand participants nor shall it implement any ATP brand activities unless and until CCC has communicated in writing its approval of the proposed operational procedures to the ATP Participant.

(c) Participation agreements between ATP Participants and brand participants: Where CCC approves an ATP Participant's application to run a brand promotion program that will include brand participants, the ATP Participant shall enter into participation agreements with brand participants. Brand participants' size may not exceed 300 percent of the applicable small business size standard. These agreements must:

(1) Specify a time period for such brand promotion and require that all brand promotion expenditures be made within the ATP Participant's approved program period;

(2) Make no allowance for extension or renewal;

(3) Limit reimbursable expenditures to those made in countries and for

activities approved in the brand participant's activity plan;

(4) Specify the percentage of promotion expenditures that will be reimbursed, reimbursement procedures, and documentation requirements;

(5) Include a written certification by the brand participant that it either owns the brand of the product it will promote or has exclusive rights to promote the brand in each of the countries in which promotion activities will occur;

(6) Require that all product labels, promotional material, and advertising will identify the origin of the U.S. agricultural commodity as ''American'', ''Product of the United States of America'', ''Product of the U.S.'', ''Product of the U.S.A.'', ''Product of America'', ''Grown in the United States of America'', ''Grown in the U.S.'', ''Grown in the U.S.A.'', ''Grown in America'', ''Made in the United States of America,'' ''Made in the U.S.'', ''Made in the U.S.A.'', ''Made in America'', or product of, grown in or made in any state or territory of the United States of America spelled out in its entirety, or other U.S. regional designation if approved in advance by the CCC; that such origin identification will be conspicuously displayed in a manner easily observed as identifying the origin of the product; and that such origin identification will conform, to the extent possible, to the U.S. standard of 1⁄8 inch (.42 centimeters) in height based on the lower case letter ''o''. The use of the above terms as a descriptor or in the name of the product (*e.g.,* Cincinnati style chili, Gina's American Pizza) does not satisfy the product origin requirement. Phrases ''product of'', ''grown in'' or ''made in'' are encouraged, but not required. An ATP Participant may request an exemption from this requirement on a case-by-case basis. All such requests shall be in writing and include justification satisfactory to the CCC that this labeling requirement would hinder an ATP Participant's promotional efforts. CCC will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labeling requirement. In addition, the CCC may temporarily waive this requirement where the CCC has determined that such labeling will likely harm sales rather than help them. Such determinations will be announced to ATP Participants via an ATP notice issued on the FAS website;

(7) Include a written certification by the brand participant that identifies its size on the date of its application for branded program funding or that it is a U.S. agricultural cooperative;

(8) Require that the brand participant submit to the ATP Participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third party funds or other contributions to program activities; and

(9) Require the brand participant to maintain all original records and documents relating to program activities for three calendar years following the end of the applicable program period and make such records and documents available upon request to authorized officials of the U.S. Government.

§ 1489.16 Contribution rules.

(a) In ATP generic promotion programs, an ATP Participant shall contribute a total amount in goods, services, and/or cash equal to at least 10 percent of the value of resources to be provided by the CCC for all generic promotion activities proposed to be undertaken by the ATP Participant.

(b) In ATP brand promotion programs, an ATP Participant conducting its own brand promotion that is a U.S. agricultural cooperative or a small-sized brand participant shall contribute at least 50 percent of the total eligible expenditures made on each approved brand promotion.

(c) An ATP Participant must use its own funds and may not use ATP program funds to pay any administrative costs of the ATP Participant's U.S. office(s), including legal fees, except as set forth in this subpart. Where the ATP Participant uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contributions the ATP Participant contributes to ATP generic or brand promotion programs.

(d) Eligible contributions:

(1) In calculating the amount of contributions that it will make, and the contributions that the U.S. industry (including expenditures to be made by entities in the applicant's industry or agricultural sector in support of the entities' related promotion activities in the markets covered by the applicant's application) or State agency will make, the ATP applicant may include the costs listed under paragraph (d)(2) of this section if:

(i) Expenditures are necessary and reasonable for accomplishment of an approved activity,

(ii) Expenditures are not included as contributions for any other Federal award;

(iii) Expenditures are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs.

(2) Subject to paragraph (d)(1) of this section, as well as applicable cost principles (*e.g.,* 2 CFR part 200) to the extent these principles do not directly conflict with the provisions of this subpart, eligible contributions are:

(i) Cash;

(ii) Compensation paid to personnel;

(iii) The cost of acquiring materials, supplies or services;

(iv) The cost of office space;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards that target a foreign audience;

(viii) The cost of subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the ATP Participant;

(ix) The cost of activities conducted overseas;

(x) Credit card fees;

(xi) The cost of any independent evaluation or audit that is not required by the CCC to ensure compliance with program agreement or regulatory requirements;

(xii) The cost of giveaways, awards, prizes and gifts;

(xiii) The cost of product samples;

(xiv) Fees for participating in U.S. government sponsored or endorsed export promotion activities;

(xv) The cost of air and local travel in the United States;

(xvi) STRE and the cost associated with trade shows, seminars, and entertainment conducted in the United States where the STRE and costs associated with trade shows, seminars, and entertainment have a programmatic purpose and are authorized in the program agreement and/or the approval letter or authorized by prior written approval of the CCC;

(xvii) Other administrative expenses (*e.g.,* supervisory travel from the U.S. to an overseas office); and

(xviii) The cost of any activity expressly listed as reimbursable in this subpart.

(3) The following are not eligible contributions:

(i) Any portion of salary or compensation of an individual who is the target of an approved promotional activity;

(ii) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Participant organization (sometimes referred to in the industry as ''backsell'');

(iii) Any land costs other than allowable costs for office space;

(iv) The cost of refreshments and related equipment provided to office staff;

(v) The cost of insuring articles owned by private individuals;

(vi) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(vii) The cost of product development, product modifications, or product research, except as described in § 1489.17(c)(22);

(viii) Slotting fees or similar sales expenditures;

(ix) Membership fees in clubs and social organizations; and

(x) Any expenditure for an activity prior to the CCC's approval of that activity.

(4) The CCC shall determine, at the CCC's discretion, whether any cost not expressly listed in this section may be included by the ATP Participant as an eligible contribution.

§ 1489.17 Reimbursement rules.

(a) An ATP Participant may seek reimbursement for an eligible expenditure if:

(1) The expenditure was necessary and reasonable for accomplishment of an approved activity; and

(2) The Participant has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraphs (a) and (d) of this section, as well as applicable cost principles (*e.g.,* 2 CFR part 200) to the extent these principles do not directly conflict with the provisions of this subpart, for either brand or generic promotion activities, the CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising, in print, electronic media, billboards, or posters, which may include advertising the availability of price discounts, except that advertising associated with a coupon or price discount for the ATP-promoted product is not reimbursable. If advertising is related to both coupons or price discounts for products other than the ATP Participant's promoted products as well as for ATP-promoted products, expenditures for such advertising will not be reimbursed in whole or in part (*e.g.,* expenditures may not be prorated and submitted for reimbursement). Electronic media includes, but is not limited to, radio, television, electronic mail, internet, telephone, text messaging, and podcasting;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and other similar point of sale materials;

(3) Direct mail advertising;

(4) In-store and food service promotions, product demonstrations to the trade and to consumers, and distribution of product samples (but not the purchase of the product samples, except as authorized in paragraph (c)(9) of this section).

(5) Temporary displays and rental of space for temporary displays;

(6) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States;

(7) Subject to paragraph (b)(18) of this section, expenditures, other than travel expenditures, associated with retail, trade and consumer exhibits and shows, whether held outside or inside the United States, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials. However, with regard to non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the United States, such expenditures are reimbursable only if the exhibit or show is: A food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the host country. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which ATP reimbursement is available and such list will be announced to ATP Participants via an ATP notice issued on FAS' website;

(8) Subject to paragraph (b)(18) of this section, international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for no more than two representatives of a single brand participant (or ATP Participant directly running its own brand program) to exhibit their company's (or cooperative's) products at a retail, trade, or consumer exhibit or show held outside the United States. Representatives may include employees and board members of private companies, employees or members of cooperatives, or any broker, consultant, or marketing representative contracted by the company or cooperative to represent the company or cooperative in sales transactions. All travel should follow a direct or usually traveled route;

(9) Subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the ATP Participant;

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, in-store promotions, food service promotions, and trade seminars;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to ATP Participants via an ATP notice issued on FAS' website. Reimbursement is available only when:

(i) The items are described in detail with a per unit cost in an approved strategic plan; and

(ii) Distribution of the promotional item is not contingent upon the consumer, or other target audience, purchasing a good or service to receive the promotional item;

(12) The design and production of packaging, labeling or origin identification, to be used during the program period in which the expenditure is made, if such packaging, labeling or origin identification is necessary to meet the importing requirements of a foreign country;

(13) The design, production, and distribution of coupons for products other than the ATP Participant's promoted products. If such activities include both coupons or price discounts for products other than the ATP Participant's promoted products as well as for ATP-promoted products, expenditures for such activities will not be reimbursed in whole or in part (*e.g.,* expenditures may not be prorated and submitted for reimbursement);

(14) An audit of an ATP Participant as required by 2 CFR part 200, subpart F, if the ATP is the ATP Participant's largest source of Federal funding;

(15) The translation of written materials as necessary to carry out approved activities;

(16) Expenditures associated with developing, updating, and servicing websites on the internet that clearly target a foreign audience;

(17) International travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200,

incurred for a foreign trade mission conducted outside the United States that is an activity under an approved branded program and that has met the following conditions:

(i) Trade mission travel for company (or cooperative) representatives was identified as a separate approved activity in the ATP Participant's UES;

(ii) The trade mission included representatives, as defined in paragraph (b)(8) of this section, from a minimum of five different companies (or cooperatives), and no more than two representatives from each participating company (or cooperative);

(iii) The appropriate FAS overseas office supported the trade mission by dedicating meaningful funding or other resources (such as facilities or staff time) to the activity; and

(iv) The ATP Participant with the approved brand program produced an itinerary or agenda for the trade mission that demonstrated that company (or cooperative) representatives would be engaged for a minimum of 6 hours per day (except for the first and last days of the mission) in trade mission activities that include, at a minimum, each of the following:

(A) A product showcase where the FAS overseas office approved an invitation list of qualified buyers;

(B) Pre-arranged one-on-one business meetings; and

(C) Evaluation and feedback sessions with FAS staff and trade mission sponsors.

(v) Reimbursement is conditional on the ATP Participant having notified in writing the Attaché/Counselor in the destination country in advance of the travel. All travel should follow a direct or usually traveled route;

(18) Where USDA has sponsored or endorsed a U.S. pavilion at a retail, trade and consumer exhibit or show, whether held outside or inside the United States, ATP funds may be used to reimburse the travel and/or non-travel expenditures of only those ATP Participants located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. All travel should follow a direct or usually traveled route. Upon written request, the CCC may temporarily waive this subsection, on a case by case basis, where:

(i) The trade show is segregated into product pavilions; or

(ii) A company's distributor or importer is located outside the U.S. pavilion. Such waiver will be provided to the ATP Participant in writing; and

(19) Contracts with U.S.-based organizations when the only contracted service such organizations provide to an ATP Participant is carrying out a specific market promotion activity in the United States directed to a foreign audience (*e.g.,* a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be reimbursable as a direct promotional expense. If a U.S.-based organization provides administrative services to the ATP Participant's domestic home office during a program period, any direct promotional services such organization provides to the Participant, whether for the Participant's domestic or overseas offices, during the same program period are not reimbursable.

(c) Subject to paragraphs (a) and (d) of this section as well as applicable cost principles (*e.g.,* 2 CFR part 200), but for generic promotion activities only, the CCC will also reimburse, in whole or in part, the cost of:

(1) Temporary contractor fees for contractors stationed overseas, except the CCC will not reimburse any portion of any such fee that exceeds the daily gross salary of a GS–15, Step 10 for U.S. Government employees in effect on the date the fee is earned, unless a bidding process reveals that such a contractor is not available at or below that salary rate;

(2) Subject to paragraph (b)(18) of this section, international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, except that if the activity is participation in a retail, trade, or consumer exhibit or show held inside the United States, international travel expenditures are covered only if the exhibit or show is: A food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the United States. The CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which ATP reimbursement is available and such list will be announced to ATP Participants via an ATP notice issued on FAS' website.

(i) The CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate or when the ATP Participant fails to notify the Attaché/Counselor in the destination country in advance of the travel, unless the CCC determines it was impractical to provide such notice. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the ATP Participant shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date and the ATP Participant shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim.

(ii) In limited circumstances, the ATP Participant may be reimbursed for air travel up to the business class rate (*i.e.,* a premium class rate other than the first class rate) upon prior written approval by the CCC. Such circumstances are:

(A) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare and the ATP Participant receives written documentation from its travel agent to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; and

(C) If an eligible traveler is an employee, contractor, or member of an ATP participant organization, and the eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds 14 hours. In such case, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (*e.g.,* weekends, holidays, personal leave, etc.) immediately following the date of arrival.

(D) If an eligible traveler is the target of a market development activity (*e.g.,* a foreign buyer, foreign importer, member of the foreign media) the ATP Participant may be reimbursed for air travel up to the business class rate when the eligible traveler's origin and/or

destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds five hours. In such case, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (*e.g.,* weekends, holidays, personal leave, etc.) immediately following the date of arrival.

(iii) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances noted in paragraphs (c)(2)(ii)(C) and (d) of this section, the CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14-hour rule for eligibility of reimbursement of business class travel or rest period expenses.

(iv) A stopover for purposes of this paragraph (c)(2) is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another.

(v) All travel under this paragraph (c)(2) should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel. An eligible traveler that is the target of a market development activity is only eligible for a rest period when that traveler flies in economy class and meets the 14-hour test;

(3) Automobile mileage at the local U.S. Embassy rate or rental cars while in travel status;

(4) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200;

(5) Accident liability insurance premiums for facilities used jointly with third-party participants for ATP activities or for ATP-funded travel of third-party participants;

(6) Market research, including research to determine the types of products that are desired in a market;

(7) Legal fees incurred in resolving trade issues with foreign countries;

(8) The sample purchase price, and the cost of transporting samples domestically in the United States to the port of export and then to the first foreign port or first point of entry, for samples of U.S. agricultural commodities used to provide on-site technical assistance to the trade necessary to facilitate successful use of the relevant U.S. agricultural commodity by importers. The target of such activity must be the trade, and not consumers, but any product resulting from the technical training can be used to determine consumer preferences;

(9) STRE incurred outside of the United States and STRE incurred within the United States in conjunction with an approved activity where the STRE has a programmatic purpose and are authorized with prior written approval from the CCC. ATP Participants are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners and receptions incurred outside of the United States as the basis for their calculating eligible expenses. ATP Participants may exceed Embassy guidelines by 25 percent without prior approval. ATP Participants may only exceed 125 percent of Embassy guidelines when they have received written authorization from the FAS Agricultural Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed 125 percent of the guidelines will not be reimbursed. ATP Participants must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines and these regulations. For STRE incurred in the United States, the ATP Participant should provide, in its request for approval, the basis for determining its proposed expenses;

(10) U.S. office(s) administrative support expenses, incurred specifically to administer the ATP, for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council. The level of such funding will be established in the approval letter.

(11) U.S. office(s) administrative support expenses, incurred specifically to administer the ATP, for any ATP Participants not identified in this paragraph (c)(11), will be considered, except for agricultural cooperatives. Reimbursement for such expenses shall not exceed six percent of the ATP Participant's total ATP budget. The level of such funding will be established in the approval letter.

(13) Non-travel expenditures associated with conducting international staff conferences held either in or outside the United States;

(14) Subject to paragraph (b)(18) of this section, domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for international retail, trade and consumer exhibits and shows conducted in the United States upon prior written approval by CCC. Domestic travel expenses to such a show or exhibit are covered only if the exhibit or show is: A food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the host country. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which ATP reimbursement is available and such list will be announced to ATP Participants via an ATP notice issued on FAS' website;

(15) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for seminars and educational training conducted in the United States;

(16) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for up to two individuals, whether home office ATP Participant employees, ATP Participant board members, or state department of agriculture employees paid by the ATP Participant, or a combination thereof, when such individuals accompany foreign trade missions or technical teams while traveling in the United States where the following conditions are met:

(i) Such trade missions or technical team visits are identified in the ATP Participant's UES;

(ii) Such trade missions or technical team visits have been approved by CCC; and

(iii) The ATP-sponsored travelers submit a follow-up trip report to CCC that includes the following:

(A) Purpose for the individuals' participation;

(B) Any pre-arranged business meetings;

(C) Itinerary and/or agenda for the trip; and

(D) Feedback from sponsors and trade mission/technical team members on the success of the trip.

(17) Approved demonstration projects;

(18) Expenditures related to copyright, trademark, or patent registration, including attorney fees;

(19) Rental or lease expenditures for storage space for program-related materials;

(20) Business cards that target a foreign audience;

(21)(i) Expenditures associated with developing, updating, and servicing websites on the internet that:

(A) Contain a message related to exporting or international trade;

(B) Include a discernible ''link'' to the FAS website or an FAS overseas office website; and

(C) Have been specifically approved by the appropriate FAS division. Expenditures related to websites or portions of websites that are accessible only to an organization's members are not reimbursable.

(ii) Reimbursement claims for websites that include ''members only'' sections must be prorated to exclude the costs associated with those areas subject to restricted access; and

(22) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending non-tariff barriers to trade that prohibit or threaten U.S. exports of agricultural commodities. Examples of such expenditures include, but are not limited to: Initial pre-clearance programs, educational training, policy advocacy, public relations efforts, foreign country audits of U.S. facilities, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, and reasonable logistical and administrative support.

(d) CCC will not reimburse any cost of:

(1) Forward year financial obligations, such as severance pay, attributable to employment of foreign nationals;

(2) Expenses, fines, settlements, or judgments relating to legal suits, challenges or disputes, except as otherwise allowed in 2 CFR part 200 and these regulations;

(3) The design and production of packaging, labeling or origin identification, except as specifically allowed in this subpart;

(4) Product development, product modification or product research, except as specified in paragraph (c)(22) of this section;

(5) Product samples to be distributed to consumers;

(6) Slotting fees or similar sales expenditures;

(7) The purchase of, construction of, or lease of space for permanent, non-mobile displays, *i.e.,* displays that are constructed to remain permanently in the same location beyond one program period. However, the CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case-by-case basis, if the Participant sought and received prior written approval from the CCC of such construction or purchase;

(8) Rental, lease or purchase of warehouse space, except for storage space for program-related material;

(9) Coupon redemption or price discounts of the ATP promoted commodity;

(10) Refundable deposits or advances;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials in excess of the limitation that the CCC will determine. Such determination will be announced in writing via an ATP notice issued on FAS' website;

(12) Alcoholic beverages that are not an integral part of an approved promotional activity;

(13) The purchase, lease (except for use in authorized travel status) or repair of motor vehicles;

(14) Travel of applicants for employment interviews;

(15) Unused non-refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(16) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if the CCC determines that such a review is needed in order to confirm past or to ensure future program agreement or regulatory compliance;

(17) Any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(18) Goods, services and salaries of personnel provided by U.S. industry or foreign third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds, except as otherwise allowed in 2 CFR part 200;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Office parking fees;

(25) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the ATP Participant;

(26) U.S. office(s) administrative expenses, including communication costs, except as noted in paragraphs (c)(11) and (12) of this section and except that usage costs for communications devices incurred while on reimbursable international or domestic travel for approved ATP brand or generic promotion activities are reimbursable as eligible travel expenditures as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200;

(27) Any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities;

(28) Payment of U.S. and foreign employees' or contractors' share of personal taxes;

(29) Any expenditure made for an activity prior to the CCC's approval of that activity;

(30) Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening; and

(31) Expenditures associated with an ATP Participant's creation or review of their fraud prevention program, contracting procedures, or brand program operational procedures.

(e) For a brand promotion activity, the CCC will reimburse no more than 50 percent of the total eligible expenditures made on that activity by a brand participant.

(f) The CCC will reimburse for expenditures made after the conclusion of an ATP Participant's program period provided:

(1) The activity was approved by the CCC prior to the end of the program period;

(2) The activity was completed within 30 calendar days following the end of the program period; and

(3) All expenditures were made for the activity within 6 months following the end of the program period.

(g) An ATP Participant shall not use ATP funds for any activity or any expenses incurred by the ATP Participant prior to the date of the program agreement or after the date the program agreement is suspended or terminated, except as otherwise permitted by the CCC.

(h) Except as otherwise provided in this subpart, ATP-funded travel shall conform to U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200 and ATP-

funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). For international travel, the ATP Participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel.

(i) The CCC may determine, at the CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

§ 1489.18 Reimbursement procedures.

(a) Participants are required to use the CCC's UES system to request reimbursement for eligible ATP expenses. Claims for reimbursement shall contain the following information:

(1) Activity type—brand or generic;

(2) Activity number;

(3) Commodity aggregate code;

(4) Country code;

(5) Cost category;

(6) Amount to be reimbursed;

(7) If applicable, any reduction in the amount of reimbursement claimed to offset CCC demand for refund of amounts previously reimbursed and reference to the relevant compliance report or written notice; and

(8) If applicable, any amount previously claimed that has not been reimbursed.

(b) All claims for reimbursement shall be submitted by the ATP Participant's U.S. office to the CCC.

(c) CCC will not reimburse a claim for less than $10,000, except that the CCC will reimburse a final claim for an ATP Participant's program period for a lesser amount.

(d) The CCC will not reimburse claims submitted later than 6 months after the end of an ATP Participant's program period.

(e) If the CCC overpays a reimbursement claim, the ATP Participant shall repay the CCC within 30 days of such overpayment the amount of the overpayment either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

(f) If an ATP Participant receives a reimbursement or offsets an advanced payment which is later disallowed, the ATP Participant shall repay the CCC within 30 days of such disallowance the amount disallowed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

(g) ATP funds may be expended by ATP Participants only on legitimate, approved activities as set forth in the program agreement and approval letter. If an ATP Participant discovers that ATP funds have not been properly spent, it shall notify the CCC and shall within 30 days of its discovery repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

(h) The ATP Participant shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to CCC.

§ 1489.19 Advances.

(a) *Policy.* In general, the CCC operates the ATP on a reimbursable basis.

(b) *Exception.* An ATP Participant for generic promotion activities may request an advance of ATP funds from the CCC, provided the ATP Participant meets the criteria for advance payments in 2 CFR part 200. The CCC will not approve any request for an advance submitted later than 3 months after the end of an ATP Participant's program period. At any given time, total payments advanced shall not exceed 40 percent of an ATP Participant's approved generic activity budget for the program period. The CCC will not advance funds to an ATP Participant for brand promotion activities. When approving a request for an advance, the CCC may require the ATP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the ATP. Whether an ''unacceptable risk'' exists in a particular situation will depend on a number of factors, such as, for example, the Participant's history of performance in ATP; the Participant's perceived financial stability and resources; and any other factors presented in the particular situation that may reflect on the Participant's responsibility or the riskiness of its activities.

(c) *Interest.* An ATP Participant shall deposit and maintain in an insured bank account in the United States all funds advanced by the CCC. The account shall be interest-bearing, unless the exceptions in 2 CFR part 200 apply. Interest earned by the ATP Participant on funds advanced by the CCC is not program income. The ATP Participant shall remit any interest earned on the advanced funds to the appropriate entity as set forth in the applicable parts of this title.

(d) *Refunds due the CCC.* An ATP Participant shall fully expend all advances on approved generic promotion activities within 90 calendar days after the date of disbursement by the CCC. By the end of the 90 calendar days, the ATP Participant must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

§ 1489.20 Financial management.

(a) An ATP Participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles. An ATP Participant's financial management system shall comply with the standards in 2 CFR part 200.

(b) An ATP Participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these regulations.

(c) An ATP Participant shall retain all records concerning an ATP program transaction for a period of three years after completion of the program transaction and permit the CCC to have full and complete access, for such three year period, to such records. These records shall include all records pertaining to contractors.

(d) An ATP Participant shall maintain its records of expenditures and contributions in a manner that allows it to provide information by activity plan, country, activity number, and cost category. Such records shall include:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Original receipts for any other program-related expenditure in excess of a set amount CCC will determine and announce in writing to all ATP Participants via an ATP notice issued on the FAS website. The CCC may, from time to time, set a different minimum amount. In that case, the CCC will announce the new amount in writing to all ATP Participants via an ATP notice issued on the FAS website;

(3) The exchange rate used to calculate the dollar equivalent of expenditures made in a foreign currency and the basis for such calculation;

(4) Copies of reimbursement claims;

(5) An itemized list of claims charged to each of the ATP Participant's CCC resources accounts;

(6) Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions such as

canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7) Documentation supporting contributions. These must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and, the method of computing the claimed contributions. ATP Participants must retain and make available for compliance review documentation related to claimed contributions.

(e) Upon request, an ATP Participant shall provide to the CCC originals of documents supporting reimbursement claims.

§ 1489.21 Reports.

(a) *End-of-Year Contribution Report.* Not later than 6 months after the end of its program period, an ATP Participant shall submit two copies of a report that identifies, by cost category and in U.S. dollar equivalent, contributions made by the Participant, the U.S. industry, and the States during that program period. A suggested format of a contribution report is available from FAS. Foreign third party contributions are not included in the end-of-year contribution report.

(b) *Trip reports.* Not later than 45 days after completion of travel (other than local travel), an ATP Participant shall electronically submit a trip report. The report must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(c) *Research reports.* Not later than 6 months after the end of its program period, an ATP Participant shall submit a report on any research conducted pursuant to the approved ATP program.

(d) *Evaluation reports.* Not later than 6 months after the end of its program period, an ATP Participant shall submit a report on any evaluations conducted in accordance with the approved ATP program, including the outcome of action taken with ATP funding and the increased market access or exports that can be directly attributed to the ATP program.

(e) *Annual audits.* Where the CCC is designated the cognizant agency for audit, the CCC may require the ATP Participant to submit to the CCC an annual audit in accordance with 2 CFR part 200. If the CCC requires an additional audit with respect to a particular agreement, the ATP Participant shall arrange for such audit and shall submit to the CCC, in the manner to be specified by the CCC, such audit of the agreement.

(f) *Additional reports.* The CCC may require the submission of additional reports.

(g) *Approved letters.* An ATP Participant's program agreement and/or approval letter shall specify to whom the Participant shall submit the reports required in this section.

(h) *Program reviews.* FAS through its authorized representatives, may review project accomplishments, management control systems, and administration of funding provided through the program to ensure adherence to requirements. During such reviews, FAS will review recipients' files related to the grant-funded program and technical assistance may be required.

§ 1489.22 Evaluation.

(a)(1) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the ATP. Evaluation of the ATP's effectiveness will depend on a clear statement by Participants of goals to be met within a specified time, schedule of measurable milestones for gauging success, plan for achievement, and assessment of results of activities at regular intervals. The overall goal of the ATP and of individual Participants' programming is to increase sales that would not have occurred in the absence of ATP funding. An ATP Participant that can demonstrate such sales, taking into account extenuating factors beyond the Participant's control, will have met the overall objective of the GPRA and the need for evaluation.

(2) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of an ATP Participant's program, contributing to program accountability, and providing evidence of program effectiveness that directly ties program funds to increased sales.

(b) All ATP Participants must report annual results against their target market and/or regional constraint/opportunity performance measures. These are outcome results usually based on multiple activities and should demonstrate progress made in the market. This report shall be completed and submitted to the CCC no later than 6 months following the end of the Participant's program period.

(c) ATP Participants conducting a branded program must also complete a brand promotion evaluation. A brand promotion evaluation is a review of the U.S. and foreign commercial entities' export sales to determine whether the activity achieved the goals specified in the approved ATP program. This evaluation shall be completed and submitted to CCC no later than 6 months following the end of the Participant's program period.

(d) When appropriate or required by the CCC, an ATP Participant shall complete a program evaluation. A program evaluation is a review of the ATP Participant's entire program, or an appropriate portion of the program as agreed to by the ATP Participant and CCC, to determine the effectiveness of the ATP Participant's strategy in meeting specified goals. Actual scope and timing of the program evaluation shall be determined by the ATP Participant and CCC and specified in the approval letter. An ATP Participant shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's findings and recommendations and proposed changes in program strategy or design as a result of the evaluation. In addition to the requirements set forth in the applicable parts of this title (for example, 2 CFR part 200), a program evaluation shall contain:

(1) The name of the party conducting the evaluation;

(2) The scope of the evaluation;

(3) A concise statement of the market constraint(s)/opportunity(ies) and the goals specified in the approved strategic plan;

(4) A description of the evaluation methodology;

(5) A description of export sales achieved;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(e) On an annual basis, or more often when appropriate or required by the CCC, an ATP Participant shall complete and submit program success stories. The CCC will announce to all ATP Participants in writing via an ATP notice issued on the FAS website the detailed requirements for completing and submitting program success stories.

§ 1489.23 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of ATP Participants' activities under the ATP program. ATP Participants shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from

USDA staff to facilitate the conduct of such reviews.

(b) Upon conclusion of the compliance review, USDA staff will provide either a written compliance report or a letter to the ATP Participant. USDA staff will issue a compliance report if it appears that CCC may be entitled to recover funds from that Participant and/or it appears that the Participant is not complying with any of the terms or conditions of the program agreement, approval letter, or the applicable laws and regulations. The compliance report will explain the basis for any recovery of funds from the Participant. Within 30 days of the date of the compliance report, the ATP Participant shall repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC. If, however, an ATP Participant notifies the CCC within 30 days of the date of the compliance report that the Participant intends to file an appeal pursuant to paragraph (e) of this section, the amount owed to the CCC by the ATP Participant is not due until the appeal procedures are concluded and the CCC has made a final determination as to the amount owed. In the absence of any finding of funds due to the CCC or other non-compliance, the CCC will issue a letter to the ATP Participant. If, as a result of a compliance review, the CCC determines that further review is needed in order to ensure compliance with the requirements of ATP, the CCC may require the Participant to contract for an independent audit.

(c) In addition, the CCC may notify an ATP Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. The CCC will explain the basis for any recovery of funds from the Participant in the written notice. The ATP Participant shall, within 30 days of the date of the notice, repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC. If, however, an ATP Participant notifies the CCC within 30 days of the date of the written notice that the Participant intends to file an appeal pursuant to paragraph (e) of this section, the amount owed to the CCC by the ATP Participant is not due until the appeal procedures are concluded and the CCC has made a final determination as to the amount owed.

(d) The fact that a compliance review has been conducted by USDA staff does not signify that an ATP Participant is in compliance with its program agreement, approval letter and/or applicable laws and regulations.

(e) Appeals:

(1) An ATP Participant may, within 60 days of the date of the compliance report or written notice from the CCC, submit a written response to the CCC appealing the report or notice. CCC, at its discretion, may extend the period for response.

(2) After review of the Participant's response, the CCC shall determine whether the Participant owes any funds to the CCC and will inform the Participant in writing of the basis for the determination. The CCC will initiate action to collect such amount by providing the Participant a written demand for payment of the debt pursuant to Debt Settlement Policies and Procedures, 7 CFR part 1403.

(3) Within 30 days of the date of the determination, the Participant may request in writing that the CCC reconsider the determination and shall submit in writing the basis for such reconsideration. The Participant may also request a hearing.

(4) If the Participant requests a hearing, the CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Participant bears the cost of a transcript; however, the CCC may in its discretion have a transcript prepared at the CCC's expense.

(5) The CCC will base its final determination upon information contained in the administrative record. The Participant must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the CCC.

§ 1489.24 Failure to make required contribution.

An ATP Participant's required contribution will be specified in the approval letter. If the ATP Participant's required contribution is specified as a dollar amount and the ATP Participant does not make the required contribution, the ATP Participant shall pay to the CCC in dollars the difference between the amount actually contributed and the amount specified in the approval letter. If the ATP Participant's required contribution is specified as a percentage of the total amount reimbursed by the CCC, the ATP Participant may either return to the CCC the amount of funds reimbursed by the CCC to increase its actual contribution percentage to the required level or pay to the CCC in dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution percentage to the required level. An ATP Participant shall remit such payment within six months after the end of its program period. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

§ 1489.25 Submissions.

For all permissible methods of delivery, submissions required by this subpart shall be deemed submitted as of the date received by the CCC.

§ 1489.26 Disclosure of program information.

(a) Documents submitted to CCC by ATP Participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, subpart A—Official Records, and specifically 7 CFR 1.12, Handling Information from a Private Business.

(b) Any research conducted by an ATP Participant pursuant to an ATP program agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§ 1489.27 Ethical conduct.

(a) An ATP Participant shall conduct its business in accordance with the laws and regulations of the country in which an activity is carried out and in accordance with applicable U.S. Federal, State and local laws, and regulations. An ATP Participant shall conduct its business in the United States in accordance with applicable Federal, State and local laws and regulations. All ATP Participants must comply with the regulations in 2 CFR part 200 and this part.

(b) Except for a U.S. agricultural cooperative or a U.S. for-profit entity, neither an ATP Participant nor its affiliates shall make export sales of U.S. agricultural commodities and products covered under the terms of the applicable ATP agreement. Nor shall such entities charge a fee for facilitating an export sale. An ATP Participant may, however, collect check-off funds and membership fees that are required for membership in the ATP Participant. For the purposes of this paragraph, ''affiliate'' means any partnership, association, company, corporation, trust, or any other such party in which the Participant has an investment other than in a mutual fund.

(c) An ATP Participant shall not limit participation in its ATP activities to members of its organization.

Participants shall ensure that their ATP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors. The ATP Participant shall publicize its program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of SRTGs, throughout the corresponding region. This includes providing to such commercial entities, upon request, a copy of any document in its possession or control containing market information developed and produced under the terms of its ATP agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating and distributing the materials. This paragraph does not apply to any U.S. agricultural cooperative when implementing its own brand program.

(d) An ATP Participant shall select U.S. agricultural industry representatives to participate in generic ATP activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by the CCC, an ATP Participant shall submit such selection criteria to the CCC for approval.

(e) All ATP Participants should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a Participant's ATP agreement and the recovery of CCC funds related to such promotions from the Participant.

(f) The ATP Participant must report any actions or circumstances that may have a bearing on the propriety of its ATP program to the appropriate Attaché/Counselor, and its U.S. office shall report such actions or circumstances in writing to the CCC.

§ 1489.28 Contracting procedures.

(a) Neither the CCC nor any other agency of the U. S. Government nor any official or employee of the CCC, FAS, USDA, or the U.S. Government has any obligation or responsibility with respect to ATP Participant contracts with third parties.

(b) An ATP Participant shall comply with the procurement standards set forth below and in the applicable parts of this title when procuring goods and services and when engaging in construction to implement program agreements (for example, 2 CFR part 200).

(c) Each ATP Participant shall establish contracting procedures, for contracts that are funded, in whole or in part, with ATP funds, that are open, fair, and competitive.

(d) Each ATP Participant shall submit to the CCC, for CCC approval, written contracting guidelines for contracts that are funded, in whole or in part, with ATP funds. The CCC will notify all new and existing ATP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of contracting guidelines. The CCC's approval of such contracting guidelines will remain in place until the CCC retracts its approval in writing, or until new guidelines are approved that supersede them. Once approved by the CCC, these contracting guidelines shall govern all of a Participant's ATP-funded contracting involving contracts with a minimum annual value that CCC will determine and announce in writing to all ATP Participants via an ATP notice issued on the FAS website. The CCC may, from time to time, set a different minimum value. In that case, the CCC will announce the new amount in writing to all ATP Participants via an ATP notice issued on the FAS website. The guidelines shall indicate the method for evaluating proposals received for all contract competitions, the method for monitoring and evaluating performance under contracts, and the method for initiating corrective action for unsatisfactory performance under contracts. The ATP Participant may modify and resubmit these guidelines for re-approval at any time. In addition to the requirements in 2 CFR part 200, these guidelines shall include, at a minimum, the following:

(1) Procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third party offers to provide goods or services. Solicitations for professional and technical services shall be based on clear and accurate descriptions of and requirements related to the services to be procured. Such procedures must include a conflict-of-interest provision that states that no employee, officer, board member, or agent thereof of the ATP Participant will participate in the review, selection, award or administration of a contract if a real or apparent conflict of interest would arise. Such a conflict would arise when an employee, official, board member, agent, or the employee's, officer's, board member's, agent's family, partners, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. Procedures shall provide that officers, employees, board members, and agents thereof shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors. Procedures shall also provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members or agents thereof;

(2) Procedures for reviewing proposals, bids, or other offers to provide goods and services. Separate procedures shall be developed for various situations, including, but not limited to: Solicitations for highly technical services; solicitations for services that are not common in a specific market; solicitations that yield receipt of three or more bids; solicitations that yield receipt of fewer than three bids;

(3) Requirements to conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement. ATP Participants' written contracting guidelines may detail special situations where the prohibitions in this subparagraph do not apply, such as in situations involving highly specialized technical services or situations where the services are not commonly offered in a specific market;

(4) Requirements to perform and document in the procurement files some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices in connection with every procurement action that is governed by the contracting guidelines;

(5) Requirements to conduct an appropriate form of competition every three years on all multi-year contracts that are governed by the contracting guidelines. However, contracts for in-country representation are not required to be re-competed after the initial reward. Instead, the performance of in-country representation must be evaluated and documented by the ATP Participant annually to ensure that the terms of the contract are being met in a satisfactory manner; and

(6) Requirements for written contracts with each provider of goods, services, or construction work. Such contracts shall require such providers to maintain adequate records to account for funds

provided to them by the ATP Participant.

(e) An ATP Participant may undertake ATP promotional activities directly or through a domestic or foreign third party. However, the ATP Participant shall remain responsible and accountable to the CCC for all ATP promotional activities and related expenditures undertaken by such third party and shall be responsible for reimbursing CCC for any funds that CCC determines should be refunded to the CCC in relation to such third party's promotional activities and expenditures.

§ 1489.29 Property standards.

The ATP Participant shall insure all ATP-funded property and equipment acquired in furtherance of program activities and safeguard such against theft, damage and unauthorized use. The Participant shall promptly report any loss, theft, or damage of property to the insurance company.

§ 1489.30 Anti-fraud requirements.

(a) *All ATP Participants.* (1) All ATP Participants shall submit to the CCC for approval a detailed fraud prevention program. The CCC will notify all new and existing ATP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of fraud prevention programs. ATP Participants should review their fraud prevention programs annually. The fraud prevention program shall, at a minimum, include an annual review of physical controls and weaknesses, a standard process for investigating and remediation of suspected fraud cases, and training in risk management and fraud detection for all current and future employees. The ATP Participant shall not conduct or permit any ATP promotion activities to occur unless and until the CCC has communicated in writing approval of the ATP Participant's fraud prevention program.

(2) The ATP Participant, within five business days of receiving an allegation or information giving rise to a reasonable suspicion of misrepresentation or fraud that could give rise to a claim by CCC, shall report such allegation or information in writing to such USDA personnel as specified in the Participant's ATP program agreement and/or approval letter. The ATP Participant shall cooperate fully in any USDA investigation of such allegation or occurrence of misrepresentation or fraud and shall comply with any directives given by the CCC or USDA to the ATP Participant for the prompt investigation of such allegation or occurrence.

(b) *ATP Participants with brand programs.* (1) The ATP Participant may charge a fee to brand participants to cover the cost of the fraud prevention program.

(2) The ATP Participant shall repay to the CCC funds paid to a brand participant through the ATP Participant on claims that the ATP Participant or the CCC subsequently determines are unauthorized or otherwise non-reimbursable expenses within 30 days of the ATP Participant's determination or CCC's disallowance. The ATP Participant shall repay CCC by submitting a check to CCC or by offsetting the ATP Participant's next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. An ATP Participant operating a brand program in strict accordance with an approved fraud prevention program, however, will not be liable to reimburse CCC for ATP funds paid on such claims if the claims were based on misrepresentations or fraud of the brand participant, its employees or agents, unless the CCC determines that the ATP Participant was grossly negligent in the operation of the brand program regarding such claims. The CCC shall communicate any such determination to the ATP Participant in writing.

§ 1489.31 Program income.

Any revenue or refunds generated from an activity, *e.g.,* participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed with ATP funds, shall be used by the ATP Participant in furtherance of its approved ATP activities in the program period during which the ATP funds are available for obligation by the ATP Participant. The use of such revenue or refunds shall be governed by 7 CFR part 1489. Interest earned on funds advanced by the CCC is not program income.

§ 1489.32 Amendment.

A program agreement may be amended in writing with the consent of the CCC and the ATP Participant.

§ 1489.33 Noncompliance with an agreement.

If an ATP Participant fails to comply with any term in its program agreement or approval letter, the CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if, appropriate, initiate a claim against the ATP Participant, following the procedures set forth in this subpart. The CCC may also initiate a claim against an ATP Participant if program income or CCC-provided funds are lost due to an action or omission of the ATP Participant.

§ 1489.34 Suspension, termination, and closeout of agreements.

A program agreement may be suspended or terminated in accordance with the suspension and termination procedures in 2 CFR part 200. If an agreement is terminated, the applicable regulations in 2 CFR part 200 will apply to the closeout of the agreement.

§ 1489.35 Paperwork reduction requirements.

The paperwork and record keeping requirements imposed by this subpart have been submitted for review by OMB under the Paperwork Reduction Act of 1980. OMB has not yet assigned a control number for this information collection.

Dated: August 27, 2018.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Dated: August 27, 2018.

Kenneth Isley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2018–18870 Filed 8–28–18; 8:45 am]

BILLING CODE 3410–10–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 217 and 225

[Regulations Q and Y; Docket No. R–1619]

RIN 7100–AF 13

Small Bank Holding Company and Savings and Loan Holding Company Policy Statement and Related Regulations; Changes to Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Interim final rule with request for comment; changes to reporting requirements.

SUMMARY: The Board invites comment on an interim final rule that raises the asset size threshold for determining applicability of the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (Regulation Y, appendix C) (Policy Statement) to $3 billion from $1 billion of total consolidated assets. The interim final rule also makes related and conforming revisions to the Board's regulatory capital rule (Regulation Q) and requirements for bank holding companies (Regulation Y). In

connection with these changes, the Board is modifying the respondent panel for certain holding company financial reports.

DATES: The interim final rule is effective August 30, 2018. Comments on the interim final rule must be received no later than October 29, 2018.

ADDRESSES: You may submit comments, identified by Docket No. R–1619 and RIN No 7100 AF 13, by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Constance M. Horsley, Deputy Associate Director, (202) 452–5239, Cynthia Ayouch, Manager, (202) 452–2204, Douglas Carpenter, Senior Supervisory Financial Analyst, (202) 452–2205, Vanessa Davis, Supervisory Financial Analyst, (202) 475–6647, or Kevin Tran, Supervisory Financial Analyst, (202) 452–2309, Division of Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452–2272; Benjamin McDonough, Assistant General Counsel, (202) 452–2036, or Mark Buresh, (202) 452–5270, Senior Attorney, Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

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I. Background

The Board issued the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (Regulation Y, appendix C) (Policy Statement) in 1980 to facilitate the transfer of ownership of small community-based banks in a manner consistent with bank safety and soundness.[1] In general, the Board has discouraged the use of debt by bank holding companies and savings and loan holding companies (collectively, depository institution holding companies) to finance acquisitions because high levels of debt can impair the ability of a depository institution holding company to serve as a source of strength to its subsidiary depository institutions. However, the Board has recognized that small depository institution holding companies have less access to equity financing than larger depository institution holding companies and that, therefore, an acquisition by a small depository institution holding company often requires the use of debt.

The Board originally adopted the Policy Statement to permit the formation and expansion of small bank holding companies with debt levels that are higher than typically permitted for larger bank holding companies. The Policy Statement contains several conditions and restrictions designed to ensure that a small depository institution holding company that operates with the heightened level of debt permitted under the Policy Statement does not present an undue risk to the safety and soundness of its subsidiary depository institutions.

Currently, the Policy Statement applies to bank holding companies with *pro forma* consolidated assets of less than $1 billion that: (i) Are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; [2] and (iii) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission (the foregoing enumerated items referred to hereafter as qualitative requirements). The Policy Statement also applies to small savings and loan holding companies as if they were bank holding companies.[3]

The Policy Statement provides that bank holding companies that meet the qualitative requirements (qualifying small holding companies) may use debt to finance up to 75 percent of the purchase price of an acquisition (that is, they may have a debt-to-equity ratio of up to 3:1). However, a qualifying small holding company must satisfy additional ongoing requirements, including that it: (i) Reduce its debt such that all debt is retired within 25 years of the debt being incurred; (ii) reduce its debt-to equity ratio to .30:1 or less within 12 years of the debt being incurred; (iii) ensure that each of its subsidiary insured depository institutions is well capitalized; and (iv) refrain from paying dividends until such time as it reduces its debt-to-equity ratio to 1.0:1 or less. The Policy Statement also provides that a qualifying small holding company may not use the expedited applications procedures or obtain a waiver of the stock redemption filing requirements applicable to bank holding companies under the Board's Regulation Y unless the bank holding company has a *pro forma* debt-to-equity ratio of 1.0:1 or less.[4]

II. The Interim Final Rule

New Asset Threshold of $3 Billion

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) was enacted.[5] Section 207 of EGRRCPA directs the Board to revise the Policy Statement to raise the consolidated assets threshold from $1 billion to $3 billion within 180 days of the enactment of EGRRCPA. The Board last raised the asset limit in 2015 when it increased it from $500 million to $1 billion.[6] The Board is issuing this interim final rule to increase the asset threshold to $3 billion consistent with EGRRCPA. The Board is not making any additional modifications to the Policy Statement at this time. The final rule applies to small savings and loan holding companies to

[1] 12 CFR part 225, app. C.

[2] The examples provided in the Policy Statement are not exhaustive and simply highlight off-balance sheet activities that may involve substantial risk. Other activities than securitization and asset management or administration may present similar concerns. *See also* 71 FR 9897, 9899, fn. 2 (February 28, 2006) (2006 Final Rule).

[3] 12 CFR 238.9.

[4] 12 CFR 225.4(b), 225.14, and 225.23.

[5] Public Law 115–174 (May 24, 2018).

[6] *See* 80 FR 20153 (April 15, 2015). In this final rule, the Board also applied the Policy Statement to small savings and loan holding companies as if they were bank holding companies. 80 FR 20153 (April 15, 2015).

the same extent as small bank holding companies, by operation of Regulation LL.

The Board believes it is appropriate to issue an interim final rule revising the Policy Statement and making conforming revisions to Regulation Q and Regulation Y to apply the statutorily mandated threshold of $3 billion to qualifying holding companies consistent with EGRRCPA. Without such action, qualifying holding companies that cross $1 billion during the pendency of the proposal would be required to incur costs to implement regulatory capital and financial reporting systems that would cease to be necessary upon issuance of the final rule. In addition, the Board believes that it is appropriate to allow holding companies with total consolidated assets of $1 billion or more but less than $3 billion to immediately become subject to reduced regulatory and reporting requirements, consistent with the congressionally-mandated increase in the threshold, so that such firms are not obligated to incur significant compliance costs in the interim until the traditional rulemaking process is completed.

Conforming Regulation Q Change

For the reasons described previously, the Board is revising Regulation Q to conform the language in § 217.1 to reflect the heightened threshold of the Policy Statement resulting from the interim final rule. Specifically, § 217.1(c)(1)(iii) is revised to remove the reference to the $1 billion threshold.

Other Conforming Amendments

A number of reporting, filing, and other provisions in Regulation Y are triggered by the consolidated asset threshold established by the Policy Statement. In connection with revising the threshold under the Policy Statement, the Board is making technical and conforming amendments to these provisions to provide that qualifying small holding companies may take advantage of the streamlined informational, notice, and other requirements embodied in these rules. These technical and conforming amendments will provide regulatory burden relief to most holding companies with less than $3 billion of consolidated total assets. The final rule makes the following changes:

- In § 225.2(r), footnote 2, the footnote describing the application of the definition of ''well-capitalized'' in the Board's Regulation Y (12 CFR part 225) to entities subject to the Policy Statement is revised to remove the reference to the threshold of $1 billion under the Policy Statement.
- In § 225.4(b)(2)(iii), the thresholds for the different *pro forma* financial information required of smaller bank holding companies compared to larger bank holding companies under § 225.4(b)(1) of the Board's Regulation Y is revised to refer to total assets of less than $3 billion rather than total assets of less than $1 billion.
- In § 225.14(a)(1)(v), the thresholds for the different *pro forma* financial information required of smaller bank holding companies compared to larger bank holding companies under § 225.14 of the Board's Regulation Y is revised to refer to total assets of less than $3 billion rather than total assets of less than $1 billion.
- In § 225.17(a)(6), footnote 6, the total asset threshold for application of the footnote related to demonstrating that debt incurred will not unduly burden the bank holding company is revised to refer to total assets of less than $3 billion rather than total assets of less than $1 billion.
- In § 225.23(a)(1)(iii), the threshold for the different *pro forma* financial information required of smaller bank holding companies compared to larger bank holding companies under § 225.23 of the Board's Regulation Y is revised to refer to total assets of less than $3 billion rather than total assets of less than $1 billion.

Regulatory Reporting Changes

The Board requires all depository institution holding companies to file certain reports with the Federal Reserve to monitor the financial condition and operations of depository institution holding companies. Those reports include the Financial Statements for Holding Companies (FR Y–9 series of reports; OMB No. 7100–0128). Depository institution holding companies with consolidated assets of less than $1 billion that also meet qualitative requirements submit summary parent-only financial data semiannually on the FR Y–9SP. Bank holding companies and savings and loan holding companies with consolidated assets of $1 billion or more—or that are otherwise not subject to the Policy Statement—submit consolidated financial data on the FR Y–9C and parent-only financial data on the FR Y–9LP, both quarterly.

The Board is modifying, effective immediately, the respondent panel for the FR Y–9SP, FR Y–9C, and FR Y–9LP for bank holding companies and savings and loan holding companies with $1 billion or more but less than $3 billion in total consolidated assets to align the threshold in the Policy Statement. If these institutions meet the qualitative requirements, they will not be required to file the FR Y–9C and the FR Y–9LP (including regulatory capital information) and would instead file the FR Y–9SP. These changes would be consistent with the final rule's changes to the Policy Statement and will reduce the regulatory reporting burden for these smaller institutions. Since most bank holding companies and savings and loan holding companies with less than $3 billion in total consolidated assets have limited activities outside of their subsidiary banks, the Board believes relying on summary parent-only financials from the FR Y–9SP and detailed depository institution financials from the Consolidated Reports of Condition and Income (FFIEC 031, FFIEC 041, FFIEC 051; OMB No. 7100–0036) is sufficient for supervisory purposes.

Comments

The Board invites comments on all aspects of this interim final rule. Interested parties are encouraged to provide comments on the $3 billion asset size threshold adjustment, the revision to Regulation Q, and the related and conforming amendments to Regulations Y.

Effective Date/Request for Comments

The Board is issuing this interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [7] The interim final rule implements the provisions in section 207 of EGRRCPA, which was enacted on May 24, 2018. EGRRCPA includes a directive that the Board revise appendix C to part 225 of title 12 of the Code of Federal Regulations within 180 days to raise the consolidated asset threshold under that appendix from $1 billion to $3 billion.[8] This section of EGRRCPA was effective upon enactment.

The Board believes that the public interest is best served by implementing the statutorily amended thresholds as soon as possible. Delaying the revisions to the Policy Statement, Regulation Q,

[7] 5 U.S.C. 553(b)(B).

[8] Public Law 115–174 (May 24, 2018), section 207(b).

and Regulation Y to complete a traditional notice and comment rulemaking process would cause holding companies with total consolidated assets of $1 billion or more and less than $3 billion to expend significant resources to continue to comply with Regulation Q and would subject these firms to heightened requirements under Regulation Y for the time necessary for the Board to go through the notice and comment rulemaking process. In addition, any holding companies that qualified under the Policy Statement and that came to have $1 billion or more in total consolidated assets while the rulemaking process was ongoing would be required to expend significant resources to comply with Regulation Q. The Board believes that providing a notice and comment period prior to issuance of the interim final rules is unnecessary because the Board does not expect public objection to the interim final rule being promulgated, as the rule merely provides the relief that Congress intended.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[9] The Board has concluded that, because the rule recognizes an exemption, the interim final rule is exempt from the APA's delayed effective date requirement.[10] Additionally, the Board finds good cause to publish the interim final rule with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

While the Board believes there is good cause to issue the rules without advance notice and comment and with an immediate effective date, the Board is interested in the views of the public and request comment on all aspects of the interim final rule.

III. Administrative Law Matters

A. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* applies only to rules for which an agency publishes a general notice of proposed rulemaking. Because the Board has determined for good cause that a notice of proposed rulemaking for this rule is unnecessary, the Regulatory Flexibility Act does not apply to this final rule.

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 553(d)(1).

B. Paperwork Reduction Act

The Board has revised the respondent panel for each of the FR Y–9SP, FR Y–9C, and FR Y–9LP in connection with this final rule. Specifically, the minimum total consolidated asset threshold for filing the FR Y–9C and FR Y–9LP has been increased to $3 billion, and the FR Y–9SP has been updated to apply to holding companies with less than $3 billion in total consolidated assets. Though the number of total respondents is not affected, the result of this modification is to reduce the aggregate burden for the FR Y–9C, FR Y–9LP, and FR Y–9SP by 75,233 hours because more firms will file the less complex FR Y–9SP.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comments on whether there are additional steps it could take to make the rule easier to understand.

List of Subjects

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 2. In § 217.1, revise paragraph (c)(1)(iii) to read as follows:

§ 217.1 Purpose, applicability, reservations of authority, and timing.

* * * * *

(c) * * *

(1) * * *

(iii) A covered savings and loan holding company domiciled in the United States, other than a savings and loan holding company that meets the requirements of 12 CFR part 225, appendix C, as if the savings and loan holding company were a bank holding company and the savings association were a bank. For purposes of compliance with the capital adequacy requirements and calculations in this part, savings and loan holding companies that do not file the FR Y–9C should follow the instructions to the FR Y–9C.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 3. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 4. In § 225.2(r), revise footnote 2 to read as follows:

§ 225.2 Definitions.

* * * * *

(r) * * *

[2] For purposes of this subpart and subparts B and C of this part, a bank holding company that is subject to the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement in appendix C of this part will be deemed to be ''well-capitalized'' if the bank holding company meets the requirements for expedited/waived processing in appendix C.

* * * * *

■ 5. In § 225.4, revise paragraph (b)(2)(iii) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(b) * * *

(2) * * *

(iii)(A) If the bank holding company has consolidated assets of $3 billion or more, consolidated *pro forma* risk-based capital and leverage ratio calculations for the bank holding company as of the most recent quarter, and, if the redemption is to be debt funded, a

parent-only *pro forma* balance sheet as of the most recent quarter; or

(B) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter, and, if the redemption is to be debt funded, one-year income statement and cash flow projections.

* * * * *

■ 6. In § 225.14, revise paragraph (a)(1)(v) to read as follows:

§ 225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.

(a) * * *

(1) * * *

(v)(A) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction; or

(B) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, and a description of the purchase price, the terms and sources of funding for the transaction, and the sources and schedule for retiring any debt incurred in the transaction;

* * * * *

■ 7. In § 225.17(a)(6), revise footnote 6 to read as follows:

§ 225.17 Notice procedure for one-bank holding company formations.

(a) * * *

(6) * * *

[6] For a banking organization with consolidated assets, on a *pro forma* basis, of less than $3 billion (other than a banking organization that will control a de novo bank), this requirement is satisfied if the proposal complies with the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (appendix C of this part).

* * * * *

■ 8. In § 225.23, revise paragraph (a)(1)(iii) to read as follows:

§ 225.23 Expedited action for certain nonbanking proposals by well-run bank holding companies.

(a) * * *

(1) * * *

(iii) If the proposal involves an acquisition of a going concern:

(A) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated *pro forma* balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired;

(B) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, a description of the purchase price and the terms and sources of funding for the transaction and the sources and schedule for retiring any debt incurred in the transaction, and the total assets, off-balance sheet items, revenue and net income of the company to be acquired; or

(C) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis;

* * * * *

■ 9. In appendix C, under the header ''1. *Applicability of Policy Statement,*'' revise the first undesignated paragraph to read as follows:

Appendix C to Part 225—Small Bank Holding Company and Savings and Loan Holding Company Policy Statement

* * * * *

1. Applicability of Policy Statement

This policy statement applies only to bank holding companies with *pro forma* consolidated assets of less than $3 billion that (i) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and (iii) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The Board may in its discretion exclude any bank holding company, regardless of asset size, from the policy statement if such action is warranted for supervisory purposes.[1] With the exception of section 4 (Additional Application Requirements for Expedited/Waived Processing), the policy statement applies to savings and loan holding companies as if they were bank holding companies.

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 24, 2018.

Ann Misback,

Secretary of the Board.

Editorial note: This document was received for publication by the Office of the Federal Register on August 24, 2018.

[FR Doc. 2018–18756 Filed 8–29–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0272; Product Identifier 2018–NM–005–AD; Amendment 39–19377; AD 2018–17–23]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by a report indicating that during a fleet survey on a retired Model 737 airplane, cracking was found common to the number 3 windshield assembly, aft sill web. This AD requires, at certain locations, repetitive high frequency eddy current (HFEC) inspections of the number 3 windshield assembly, aft sill web; and applicable on-condition actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 4, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 4, 2018.

ADDRESSES: 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; internet *https://www.myboeingfleet.com.* You

[1] [RESERVED].

may view this service information at the FAA, Transport Standards 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 on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0272.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0272; 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 regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *david.truong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We 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 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on April 16, 2018 (83 FR 16243). The NPRM was prompted by a report indicating that during a fleet survey on a retired Model 737 airplane, cracking was found common to the number 3 windshield assembly, aft sill web. The NPRM proposed to require, at certain locations, repetitive HFEC inspections of the number 3 windshield assembly, aft sill web; and applicable on-condition actions.

We are issuing this AD to address such cracking common to the number 3 windshield assembly, aft sill web, which could adversely affect the structural integrity of the windshield assembly.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the Supplemental Type Certificate (STC) ST01219SE does not affect the actions specified in the NPRM.

We agree with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request To Clarify Inspection Location

Boeing requested that the language in the ''Related Service Information under 1 CFR part 51'' paragraph be clarified in the proposed AD. Boeing requested that we replace ''repetitive HFEC inspections of the number 3 windshield and of the aft sill web'' with ''repetitive HFEC inspections of the number 3 windshield aft sill web.'' Boeing stated that there is no requirement in Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017, to inspect the windshield with an HFEC inspection. Boeing commented that the only HFEC requirement in Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017, is to accomplish the HFEC inspections of the number 3 windshield aft sill web.

We agree with the request to clarify the inspection location, for the reasons provided. We have revised the ''Summary and Related Service Information under 1 CFR part 51'' section, as well as the **SUMMARY**, of this final rule accordingly. For consistency within this AD and in response to the following Boeing comment, this AD specifies the ''number 3 windshield assembly, aft sill web.''

Request To Clarify Location of Cracking

Boeing requested that we clarify the unsafe condition in paragraph (e) of the NPRM. Boeing requested that we replace the language ''common to the windshield and aft sill web'' with ''common to the number 3 windshield assembly, aft sill web.'' Boeing stated that the cracking in the aft sill web is at the fastener common to the aft sill web and the outer chord of the number 3 windshield assembly and is not actually common to the windshield.

We agree with the request, for the reasons provided. We have revised paragraph (e) of this AD, as well as the **SUMMARY** and the Discussion section of this final rule, accordingly.

Request To Clarify Certain Language in the ''Exceptions to Service Information Specifications'' Paragraph

Boeing requested that we revise paragraph (i)(2) of the ''Exceptions to Service Information Specifications'' paragraph in the proposed AD. Boeing requested that we replace the language ''specifies contacting Boeing'' with ''specifies contacting Boeing for repair instructions.'' Boeing commented that this addition adds clarity.

We agree with the request and have revised this AD to clarify the requirements accordingly.

Explanation of Change to Applicability Description

The applicability of the proposed AD referred to affected airplanes identified in Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017. The effectivity in the service information is identified in terms of line numbers. Since those line numbers include all airplanes of the affected models, we have revised the applicability in this AD as all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017. The service information describes procedures for repetitive HFEC inspections of the number 3 windshield assembly, aft sill web at station 254.6, between stringers S–9 and S–11 on the left- and right-hand sides; and applicable on-condition actions. 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 the **ADDRESSES** section.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

We are 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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

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) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

(4) 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.

Costs of Compliance

We estimate that this AD affects 63 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC inspection	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle	$21,420 per inspection cycle.

List of Subjects in 14 CFR Part 39

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

Adoption of 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 (AD):

2018–17–23 The Boeing Company: Amendment 39–19377; Docket No. FAA–2018–0272; Product Identifier 2018–NM–005–AD.

(a) Effective Date

This AD is effective October 4, 2018.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report indicating that during a fleet survey on a retired Model 737 airplane, cracking was found common to the number 3 windshield assembly, aft sill web. We are issuing this AD to address such cracking at this location, which could adversely affect the structural integrity of the windshield assembly.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017: Within 120 days after the effective date of this AD, do an inspection to correct the unsafe condition, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Group 2 Airplanes

For airplanes identified as Group 2 in Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017: Except as required by paragraph (i) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017.

Note 1 to paragraph (h) of this AD: Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1377, dated December 11, 2017, which is referred to in Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017.

(i) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017, uses the phrase ''the original issue date of Requirements Bulletin 737–53A1377 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017, specifies contacting Boeing for

repair instructions, this AD requires repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(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 Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, 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.

(k) Related Information

For more information about this AD, contact David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *david.truong@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737–53A1377 RB, dated December 11, 2017.

(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; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Standards 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 service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on August 17, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18658 Filed 8–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0411; Product Identifier 2017–NM–157–AD; Amendment 39–19376; AD 2018–17–22]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A319–115 and –132 airplanes, and Model A320–214, –216, –232, and –233 airplanes. This AD was prompted by a report indicating that certain modified airplanes do not have electrical ground wires on the fuel level sensing control unit (FLSCU), which adversely affects the fuel gravity feeding operation. This AD requires modification of the FLSCU wiring. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 4, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 4, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards 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 on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0411.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0411; 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 regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A319–115 and –132 airplanes, and Model A320–214, –216, –232, and –233 airplanes. The NPRM published in the **Federal Register** on May 15, 2018 (83 FR 22426). The NPRM was prompted by a report indicating that certain modified airplanes do not have electrical ground wires on the FLSCU, which adversely affects the fuel gravity feeding operation. The NPRM proposed to require modification of the FLSCU wiring.

We are issuing this AD to address reduced fuel pressure at the engine inlet, potentially resulting in an uncommanded in-flight shutdown when flying at the fuel gravity feed ceiling levels.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0216, dated October 30, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A319–115 and –132 airplanes, and Model A320–214, –216, –232, and –233 airplanes. The MCAI states:

Airbus introduced mod 154327 on A319 and A320 aeroplanes which substituted the pump fuel feed system from the centre fuel tank with a jet pump transfer system, based on the Airbus A321 design. Following the modification introduction, it was discovered that the modified aeroplanes do not have electrical ground signals that replicate those from the deleted centre tank pump pressure

switches. These signals are used as part of the fuel recirculation inhibition request logic. Subsequent investigation determined that ground wires had not been installed on the fuel level sensor control units (FLSCU) of post-mod aeroplanes, due to a drawing error on the fuel system recirculation principle diagram. Without these ground wires providing inputs, the FLSCU logic is not correctly implemented for gravity feeding operation.

This condition, if not corrected, could lead to reduced fuel pressure at the engine inlet, possibly resulting in an uncommanded inflight shut-down when flying at the gravity feed ceiling levels, as defined in the Aircraft Flight Manual (AFM).

To address this potential unsafe condition, Airbus issued AFM Temporary Revision (TR) 695 Issue 1 and AFM TR 699 Issue 1 to prohibit the use of Jet B and JP4 fuel, and AFM TR 700 Issue 1 to provide instructions for amendment of the gravity feed procedure for the other fuels.

Consequently, EASA issued AD 2016–0205 [which corresponds to FAA AD 2016–25–23, Amendment 39–18749 (81 FR 90971, December 16, 2016) (''AD 2016–25–23'')], requiring amendment of the applicable AFM to include the new gravity feed procedure and to reduce the list of authorised fuels.

Since that [EASA] AD was issued, Airbus developed a wiring modification to restore the intended FLSCU logic, and issued Service Bulletin (SB) A320–28–1242, later revised, providing instructions to modify affected aeroplanes.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016–0205, which is superseded, and requires modification of FLSCU wiring. This [EASA] AD also allows, after that modification, to remove the previously inserted AFM TR's from the applicable AFM.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0411.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. The Air Line Pilots Association, International (ALPA) stated that it supports the NPRM.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Service Bulletin A320–28–1242, Revision 01, dated October 3, 2017. The service information describes procedures for modification of the FLSCU wiring. 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 the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 58 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
14 work-hours × $85 per hour = $1,190	$204	$1,394	$80,852

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

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.

We are 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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

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) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

(4) 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.

Adoption of 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 (AD):

2018–17–22 Airbus SAS: Amendment 39–19376; Docket No. FAA–2018–0411; Product Identifier 2017–NM–157–AD.

(a) Effective Date

This AD is effective October 4, 2018.

(b) Affected ADs

This AD affects AD 2016–25–23, Amendment 39–18749 (81 FR 90971, December 16, 2016) (''AD 2016–25–23'').

(c) Applicability

This AD applies to Airbus SAS Model A319–115 and –132 airplanes, and Model A320–214, –216, –232, and –233 airplanes, certificated in any category, all manufacturer serial numbers on which Airbus modification 154327 has been embodied in production, except those on which Airbus modification 158740 has been embodied.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report indicating that certain modified airplanes do not have electrical ground wires on the fuel level sensing control unit (FLSCU), which adversely affects the fuel gravity feeding operation. We are issuing this AD to prevent reduced fuel pressure at the engine inlet, potentially resulting in an uncommanded in-flight shutdown when flying at the fuel gravity feed ceiling levels.

(f) Compliance

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

(g) Modification

Within 24 months after the effective date of this AD, modify the FLSCU wiring in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1242, Revision 01, dated October 3, 2017.

(h) Terminating Action for AD 2016–25–23 and Amendment of the Airplane Flight Manual (AFM)

Modification of an airplane as required by paragraph (g) of this AD terminates all of the requirements of AD 2016–25–23 for that airplane. After modification of an airplane as required by paragraph (g) of this AD, remove Airbus A318/A319/A320/A321 Temporary Revision TR695, Issue 1.0, dated August 1, 2016; or Airbus A318/A319/A320/A321 Temporary Revision TR699, Issue 1.0, dated August 1, 2016; as applicable; and Airbus A318/A319/A320/A321 Temporary Revision TR700, Issue 1.0, dated August 1, 2016, from the applicable AFM of that airplane.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–28–1242, dated December 21, 2016.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0216, dated October 30, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0411.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3223.

(l) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–28–1242, Revision 01, dated October 3, 2017.

(ii) Reserved.

(3) For Airbus SAS service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* internet: *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards 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 service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on August 17, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18662 Filed 8–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0031; Product Identifier 2017–NM–127–AD; Amendment 39–19374; AD 2018–17–20]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 727 airplanes. This AD was prompted by significant changes made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention. This AD requires revising the maintenance or inspection program, as applicable, to incorporate the latest revision of the AWLs. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 4, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 4, 2018.

ADDRESSES: 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; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards 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 on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0031.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0031; 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 regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *christopher.r.baker@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We 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 727 airplanes. The NPRM published in the **Federal Register** on February 8, 2018 (83 FR 5576). The NPRM was prompted by significant changes made to the AWLs related to fuel tank ignition prevention. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate the latest revision of the AWLs.

We are issuing this AD to address the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. Boeing supported the NPRM.

Clarification of Affected Airplanes in Paragraph (g)(4)(ii) of This AD

The phrase ''as of the effective date of this AD'' was inadvertently not included in the description of affected airplanes in paragraph (g)(4)(ii) of the proposed AD. We have revised paragraph (g)(4)(ii) of this AD accordingly.

Clarification of Alternative Wire Types and Sleeving

Paragraph (h) of this AD allows operators to revise AWL No. 28–AWL–03 to identify certain alternative wire types and sleeving materials. AWL No. 28–AWL–03 was originally mandated by AD 2008–04–10 R1, Amendment 39–16121 (74 FR 66227, December 15, 2009) (''AD 2008–04–10 R1''). Since the issuance of AD 2008–04–10 R1, which will be terminated by this AD, we received numerous requests for approval of alternative methods of compliance (AMOCs) from operators and supplemental type certificate (STC) holders (or applicants) to allow the installation of the alternative wire types and sleeving identified in paragraphs (h)(1) and (h)(2) of this AD. We evaluated certain attributes of those alternative wire types and sleeving for each installation, and issued numerous AMOC approvals based on our determination that the installation of those wire types and sleeving would provide an acceptable level of safety. Although paragraph (h) of this AD provides certain allowances, it does not provide approval of alternative wire types and sleeving that are installed as part of an aircraft design change. Each applicant for any design change is still responsible to show that the installation of alternative wire types and sleeving identified in paragraphs (h)(l) and (h)(2) of this AD complies with all applicable regulatory requirements. This responsibility includes, but is not limited to, substantiation of compliance with flammability requirements, and substantiation to show that sleeve installation, including the selection of sleeve thickness, is adequate to protect wires from chafing for the life of installation. If such an installation is found to be compliant with all applicable regulatory requirements, revision of AWL No. 28–AWL–03 in accordance with paragraph (h) of this AD would allow the installation of the alternative wire types and sleeving.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing 727–100/200 Airworthiness Limitations (AWLs) D6–8766–AWL, Revision December 2016. This service information describes AWL tasks that include airworthiness limitation instructions (ALIs) and critical design configuration control limitations (CDCCLs) related to fuel tank ignition prevention. 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 the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 20 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are 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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

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) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

(4) 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.

Adoption of 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 (AD):

2018–17–20 The Boeing Company: Amendment 39–19374; Docket No. FAA–2018–0031; Product Identifier 2017–NM–127–AD.

(a) Effective Date

This AD is effective October 4, 2018.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) through (b)(5) of this AD.

(1) AD 2008–04–10 R1, Amendment 39–16121 (74 FR 66227, December 15, 2009) (''AD 2008–04–10 R1'').

(2) AD 2009–05–03, Amendment 39–15827 (74 FR 8851, February 27, 2009) (''AD 2009–05–03'').

(3) AD 2011–12–05, Amendment 39–16712 (76 FR 33991, June 10, 2011) (''AD 2011–12–05'').

(4) AD 2013–22–03, Amendment 39–17635 (78 FR 65193, October 31, 2013) (''AD 2013–22–03'').

(5) AD 2013–24–15, Amendment 39–17692 (78 FR 72791, December 4, 2013) (''AD 2013–24–15'').

(c) Applicability

This AD applies to The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before the effective date of this AD.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by significant changes made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate all information in Section A, including Subsections A.1 and A.2, of Boeing 727–100/200 Airworthiness Limitations (AWLs) D6–8766–AWL, Revision December 2016. The initial compliance times for the airworthiness limitation instruction (ALI) items are within the applicable compliance times specified in paragraphs (g)(1) through (g)(6) of this AD.

(1) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank (Tank No. 2)'': At the applicable time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) For airplanes that have been previously inspected as specified in 28–AWL–01 as of the effective date of this AD: Conduct the inspection within 120 months after the most recent inspection.

(ii) For airplanes that have not been inspected as specified in 28–AWL–01 as of the effective date of this AD: Conduct the inspection within 12 months after the effective date of this AD.

(2) For AWL No. 28–AWL–16, ''Over-Current and Arcing Protection Electrical Design Features Operation—Boost Pump Ground Fault Interrupter (GFI)'': At the applicable time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) For airplanes that have been previously inspected as specified in 28–AWL–16 as of the effective date of this AD: Conduct the inspection within 12 months after the most recent inspection.

(ii) For airplanes that have not been inspected as specified in 28–AWL–16 as of the effective date of this AD: Conduct the inspection within 90 days after the effective date of this AD.

(3) For AWL No. 28–AWL–17, ''Auxiliary Tank Fuel Boost Pump Power Failed On Protection System'': At the applicable time specified in paragraph (g)(3)(i) or (g)(3)(ii) of this AD.

(i) For airplanes that have been previously inspected as specified in 28–AWL–17 as of the effective date of this AD: Conduct the inspection within 12 months after the most recent inspection.

(ii) For airplanes that have not been inspected as specified in 28–AWL–17 as of the effective date of this AD: Conduct the inspection within 90 days after the effective date of this AD.

(4) For AWL No. 28–AWL–18, ''Fuel Quantity Indicating System (FQIS)—Out-Tank Wiring Lightning Shield to Ground Termination and Joint Resistance for the Volumetric Top-Off (VTO) Unit (If Installed)'': At the applicable time specified in paragraph (g)(4)(i) or (g)(4)(ii) of this AD.

(i) For airplanes that have been previously inspected as specified in 28–AWL–18 as of the effective date of this AD: Conduct the inspection within 120 months after the most recent inspection.

(ii) For airplanes that have not been inspected as specified in 28–AWL–18 as of the effective date of this AD: Conduct the inspection within 12 months after the effective date of this AD.

(5) For AWL No. 28–AWL–22, ''AC Fuel Boost Pump Bonding Installation'': At the applicable time specified in paragraph (g)(5)(i) or (g)(5)(ii) of this AD.

(i) For airplanes that have been previously inspected as specified in 28–AWL–22 as of

the effective date of this AD: Conduct the inspection within 72 months after the most recent inspection.

(ii) For airplanes that have not been inspected as specified in 28–AWL–22 as of the effective date of this AD: Conduct the inspection within 12 months after the effective date of this AD.

(6) For AWL No. 28–AWL–24, ''Motor Operated Valve Bonding Jumper Installation—Fault Current Protection'': At the applicable time specified in paragraph (g)(6)(i) or (g)(6)(ii) of this AD.

(i) For airplanes that have been previously inspected as specified in 28–AWL–24 as of the effective date of this AD: Conduct the inspection within 60 months after the most recent inspection.

(ii) For airplanes that have not been inspected as specified in 28–AWL–24 as of the effective date of this AD: Conduct the inspection within 12 months after the effective date of this AD.

(h) Additional Acceptable Wire Types and Sleeving

As an option, when accomplishing the actions required by paragraph (g) of this AD, the changes specified in paragraphs (h)(1) and (h)(2) of this AD can be made to AWL No. 28–AWL–03.

(1) Where AWL No. 28–AWL–03 identifies wire types BMS 13–48, BMS 13–58, and BMS 13–60, add the following acceptable wire types: MIL–W–22759/16, SAE AS22759/16 (M22759/16), MIL–W–22759/32, SAE AS22759/32 (M22759/32), MIL–W–22759/34, SAE AS22759/34 (M22759/34), MIL–W–22759/41, SAE AS22759/41 (M22759/41), MIL–W–22759/86, SAE AS22759/86 (M22759/86), MIL–W–22759/87, SAE AS22759/87 (M22759/87), MIL–W–22759/92 and SAE AS22759/92 (M22759/92); and MIL–C–27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types identified above.

(2) Where AWL No. 28–AWL–03 identifies TFE–2X Standard wall for wire sleeving, add the following acceptable sleeving materials: Roundit 2000NX and Varglas Type HO, HP, or HM.

(i) No Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC), in accordance with the procedures specified in paragraph (k) of this AD.

(j) Terminating Actions

Accomplishment of the maintenance or inspection program revision required by paragraph (g) of this AD terminates the actions specified in paragraphs (j)(1) through (j)(5) of this AD.

(1) The revision required by paragraph (g) of AD 2008–04–10 R1.

(2) The revision required by paragraph (h) of AD 2009–05–03.

(3) The revision required by paragraph (j) of AD 2011–12–05.

(4) The revision required by paragraph (h) of AD 2013–22–03.

(5) The revision required by paragraphs (n)(1) and (n)(2) of AD 2013–24–15.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l) 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 local flight standards district office/certificate holding district 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 Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO 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.

(l) Related Information

For more information about this AD, contact Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *christopher.r.baker@faa.gov.*

(m) 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 727–100/200 Airworthiness Limitations (AWLs) D6–8766–AWL, Revision December 2016.

(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; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Standards 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 service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on August 17, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18664 Filed 8–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0036; Product Identifier 2017–SW–015–AD; Amendment 39–19354; AD 2018–16–14]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Inc., Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bell Helicopter Textron Inc. (Bell) Model 212, Model 412, and Model 412EP helicopters. This AD requires replacing the emergency flotation system (EFS) tube assembly. This AD was prompted by a report of an EFS tube assembly failure. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective October 4, 2018.

ADDRESSES: For service information identified in this final rule, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0036; 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 AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) 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.

FOR FURTHER INFORMATION CONTACT: Rory Rieger, Aviation Safety Engineer, DSCO Branch, AIR–7J0, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5193; email *rory.rieger@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On January 26, 2018, at 83 FR 3630, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Bell Model 212, Model 412, and Model 412EP helicopters with a certain EFS tube assembly installed. The NPRM proposed to require, within 300 hours time-in-service (TIS), replacing any EFS tube assembly part number (P/N) 412–073–820–101 with an unknown manufacture date or that was manufactured before July 28, 2016. The NPRM also proposed to prohibit installing on any helicopter an EFS tube assembly P/N 412–073–820–101 that was manufactured before July 28, 2016 or that has an unknown manufacture date.

The NPRM was prompted by a report from Bell that an EFS tube assembly separated from the valve during a 2-year inflation test. A subsequent investigation found that excessive sleeve preset force during manufacturing caused cracks in the sleeve of the tube assembly, which may result in the EFS float failing to deploy. Bell determined that only those EFS tube assemblies with P/N 412–073–820–101 that were shipped prior to July 28, 2016, were subject to this manufacturing defect. Bell states that because this manufacturing defect is difficult to detect, affected EFS tube assemblies in service must be replaced. The affected parts were associated with a single Bell supplier that is no longer manufacturing the tube assembly.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM.

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

We reviewed Bell Alert Service Bulletin (ASB) 212–11–143 for Bell Model 212 helicopters, and ASB 412–11–147 for Bell Model 412 and 412EP helicopters, both Revision C and dated December 22, 2016. Each ASB describes and illustrates procedures to replace the tube assembly within 600 flight hours or by March 31, 2017.

Differences Between This AD and the Service Information

The service information requires compliance within 600 flight hours or by March 31, 2017; this AD requires compliance within 300 hours TIS.

Costs of Compliance

We estimate that this AD will affect 250 helicopters of U.S. Registry.

We estimate that operators will incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, replacing a tube assembly will require about 6 work-hours and required parts will cost $4,902, for a total cost of $5,412 per helicopter and $1,353,000 for the U.S. fleet.

According to Bell's service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Bell. Accordingly, we have included all costs in our cost estimate.

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.

We are 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) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

(4) 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.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of 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 (AD):

2018–16–14 Bell Helicopter Textron Inc.: Amendment 39–19354; Docket No. FAA–2018–0036; Product Identifier 2017–SW–015–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron Inc. Model 212, Model 412, and Model 412EP helicopters, certificated in any category, with an emergency flotation system (EFS) tube assembly part number (P/N) 412–073–820–101 with a date of manufacture before July 28, 2016, or an unknown date of manufacture installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack on an EFS tube assembly. This condition could result in failure of the

emergency floats to inflate during an emergency water landing.

(c) Effective Date

This AD becomes effective October 4, 2018.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 300 hours time-in-service:

(i) Remove the EFS tube assembly from service.

(ii) Lubricate the shoulder of the sleeves, threads, and seat of each mating fitting with anti-seize compound.

(iii) Install an EFS tube assembly not listed in paragraph (a) of this AD.

(2) After the effective date of this AD, do not install an EFS tube assembly listed in paragraph (a) of this AD on any helicopter.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Rory Rieger, Aviation Safety Engineer, DSCO Branch, AIR–7J0, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5193; email *rory.rieger@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

Bell Helicopter Alert Service Bulletins 212–11–143 and 412–11–147, both Revision C and dated December 22, 2016, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/*. You may review a copy of information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 3212 Emergency Flotation Section.

Issued in Fort Worth, Texas, on August 3, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–18735 Filed 8–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0300; Product Identifier 2017–NM–134–AD; Amendment 39–19375; AD 2018–17–21]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318, A319, and A320 series airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. This AD was prompted by a revision of an airworthiness limitations document that specifies more restrictive maintenance requirements and airworthiness limitations. This AD requires revising the maintenance or inspection program, as applicable, to incorporate revised fuel airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 4, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 4, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards 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 on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0300.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0300; 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 regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318, A319, and A320 series airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. The NPRM published in the **Federal Register** on April 27, 2018 (83 FR 18485). The NPRM was prompted by a revision of an airworthiness limitations document that specifies more restrictive maintenance requirements and airworthiness limitations. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate revised fuel airworthiness limitations.

We are issuing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0169, dated September 7, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318, A319, and A320 series airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. The MCAI states:

> The Fuel Airworthiness Limitations (FAL) for Airbus A320 family aeroplanes, which are approved by EASA, are currently defined and published in the Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 5 document. These instructions have been identified as mandatory for continued airworthiness. Failure to accomplish these instructions could result in a fuel tank explosion and consequent loss of the aeroplane.

* * * the Federal Aviation Administration (FAA) published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published interim Policy INT/POL/25/12. In response to these regulations, Airbus conducted a design review to develop FAL for Airbus A320 family aeroplanes.

The FAL were specified in Airbus A318/A319/A320/A321 FAL document ref. 95A.1931/05 at issue 04 for A318/A319/A320/A321 aeroplanes. This document was approved by EASA and is now referenced in Airbus A318/A319/A320/A321 ALS Part 5 to comply with EASA policy statement (EASA D2005/CPRO).

Previously, EASA issued AD 2014–0260 [which corresponds to FAA AD 2016–20–12, Amendment 39–18678 (81 FR 72507, October 20, 2016) (''AD 2016–20–12'')] to require accomplishment of all FAL-related actions as described in ALS Part 5 at Revision 01. ALS Part 5 Revision 02 and 03 were not mandated because no significant changes were introduced with these Revisions. The new ALS Part 5 Revision 04 (hereafter referred to as 'the ALS' in this [EASA] AD) includes new and/or more restrictive requirements and extends the applicability to model A320–251N, A320–271N, A321–251N, A321–253N and A321–271N aeroplanes.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0260, which is superseded, and requires implementation of the actions specified in the ALS.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0300.

Comments

We gave the public the opportunity to participate in developing this final rule. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 5 Fuel Airworthiness Limitations (FAL), Revision 04, dated April 6, 2017. This service information describes fuel system airworthiness limitations. 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 the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 1,250 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

We are 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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

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) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

(4) 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.

Adoption of 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 (AD):

2018–17–21 Airbus SAS: Amendment 39–19375; Docket No. FAA–2018–0300; Product Identifier 2017–NM–134–AD.

(a) Effective Date

This AD is effective October 4, 2018.

(b) Affected ADs

This AD affects AD 2016–20–12, Amendment 39–18678 (81 FR 72507, October 20, 2016) (''AD 2016–20–12'').

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before April 6, 2017.

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

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

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

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

(d) Subject

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

(e) Reason

This AD was prompted by a revision of an airworthiness limitations document that specifies more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 5 Fuel Airworthiness Limitations (FAL), Revision 04, dated April 6, 2017. The initial compliance times for new or revised tasks are the minimum intervals or times specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 5 Fuel Airworthiness Limitations (FAL), Revision 04, dated April 6, 2017, or within 30 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

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

(i) Terminating Action for AD 2016–20–12

Accomplishing the actions required by this AD terminates all requirements of AD 2016–20–12.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0169, dated September 7, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0300.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(l) Material Incorporated by Reference

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

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

(i) Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 5 Fuel Airworthiness Limitations (FAL), Revision 04, dated April 6, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards 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 service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on August 17, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18661 Filed 8–29–18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0766; Product Identifier 2018–NM–111–AD; Amendment 39–19383; AD 2018–18–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a report of protective caps that were not removed from fire extinguishing lines in certain areas of the engines. This AD requires an inspection for the presence of protective caps on fire extinguishing lines, and corrective action. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective September 14, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 14, 2018.

We must receive comments on this AD by October 15, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Airbus SAS,

Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com*; internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Standards 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 on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0766.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0766; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0154, dated July 19, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states:

> During an inspection on the A350 final assembly line, after engine installation, protective caps were found still in place on fire extinguishing lines at engine zone 1 and zone 3. Further investigations indicated that this failure of removing them, as the standard instructions specify, may have occurred on other aeroplanes. Airbus has identified the [manufacturer serial numbers] MSN that may be affected.
>
> This condition, if not detected and corrected, could, in case of an engine fire, prevent extinguishing that engine fire, possibly resulting in reduced control of the aeroplane.
>
> To address this unsafe condition, Airbus published the [Alert Operators Transmission A26P004–18, Revision 00, dated June 26, 2018] AOT to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time detailed inspection (DET) of the affected areas and, depending on findings, [corrective action].

Corrective action includes removal of the protective caps and cleaning out any melted protective caps. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0766.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Alert Operators Transmission (AOT) A26P004–18, Revision 00, dated June 26, 2018. This service information describes procedures for inspection for the presence of protective caps on fire extinguishing lines, and corrective actions. 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 the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in the service information described previously.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because protective caps still in place on fire extinguishing lines in certain areas of the engines could, in case of an engine fire, prevent extinguishing that engine fire, possibly resulting in reduced control of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0766; Product Identifier 2018–NM–111–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 11 airplanes of U.S. registry. We estimate 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
1 work-hour × $85 per hour = $85	$0	$85	$935

We estimate the following costs to do any necessary on-condition action that would be required based on the results of any required actions. We have no way of determining the number of aircraft

that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

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.

We are 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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We determined that 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. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. 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.

Adoption of 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 (AD):

2018–18–04 Airbus SAS: Amendment 39–19383; Docket No. FAA–2018–0766; Product Identifier 2018–NM–111–AD.

(a) Effective Date

This AD becomes effective September 14, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in Airbus Alert Operators Transmission (AOT) A26P004–18, Revision 00, dated June 26, 2018.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by a report of protective caps that were not removed from fire extinguishing lines in certain areas of the engines. We are issuing this AD to address protective caps remaining on fire extinguishing lines in certain areas of the engines, which could, in case of an engine fire, prevent extinguishing that engine fire, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Inspection for Caps

Within 4 months after the effective date of this AD, accomplish a detailed inspection of the affected areas in accordance with paragraph 4.2.2, Inspection Requirements, of Airbus Alert Operators Transmission (AOT) A26P004–18, Revision 00, dated June 26, 2018.

(h) Corrective Action

If, during the inspection required by paragraph (g) of this AD, any protective cap is found installed, before next flight, do all applicable corrective actions (removing the cap or cleaning out any melted caps) in accordance with paragraph 4.2.3, Findings, of Airbus Alert Operators Transmission (AOT) A26P004–18, Revision 00, dated June 26, 2018.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified

as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0154, dated July 19, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0766.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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) Airbus Alert Operators Transmission (AOT) A26P004–18, Revision 00, dated June 26, 2018.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com*; internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards 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 service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on August 21, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18734 Filed 8–29–18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0131; Airspace Docket No. 18–ASO–4]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Eastover, SC and Sumter, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace and Class E airspace extending upward from 700 feet above the surface at Mc Entire Joint National Guard Base (JNGB), Eastover, SC, to accommodate airspace reconfiguration due to the decommissioning of the Mc Entire non-directional radio beacon (NDB) and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also updates the geographic coordinates of the Mc Entire JNGB, and Shaw AFB, and Sumter Airport, Sumter, SC, and updates the names of Mc Entire JNGB and Sumter Airport. In addition, an editorial change is made to the airspace designation in both Class D and E airspace.

DATES: Effective 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 14610, April 5, 2018) for Docket No. FAA–2018–0131 to amend Class D and Class E airspace extending upward from 700 feet above the surface at Mc Entire JNGB due to the decommissioning of the Mc Entire NDB, and cancellation of the NDB approach. The NPRM also advised of the proposed amendment to the geographic coordinates of Mc Entire JNGB, and Shaw AFB, and Sumter Airport, Sumter, SC, and the Mc Entire JNGB TACAN geographic coordinates. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from the Aircraft Owners and Pilots Association (AOPA) in support of the proposal. In their comment, AOPA stated that the NPRM did not comply with FAA guidance in Order 7400.2, Procedures for Handling Airspace Matters, because a graphic was not included in the docket. Additionally, AOPA encouraged the FAA to follow

their guidance by making the action effective date concurrent with publication of the VFR sectional chart publication date.

The FAA has determined AOPA's comments raised no substantive issues related to the proposed changes to the airspace addressed in the NPRM. To the extent the FAA failed to follow its policies related to publishing graphics in the docket and coincidental to the sectional chart date, we note the following.

The FAA provided graphics for this proposal on April 25, 2018. Nevertheless, specific to AOPA's comment regarding the FAA already creating a graphical depiction of new or modified airspace overlaid on a Sectional Chart for quality assurance purposes, this is not correct nor required in all cases. During the airspace reviews, airspace graphics may be created, if deemed necessary, to determine if there are terrain issues, or if cases are considered complex. However, in many cases, a graphic is not required when developing an airspace proposal.

With respect to AOPA's comment addressing effective dates, FAA Order 7400.2L, para 2–3–7.a.4. states that, to the extent practicable, airspace areas and restricted areas should become effective on a sectional chart date and that consideration should be given to selecting a sectional chart date that matches a 56-day en route chart cycle date. The FAA does consider Class E airspace amendment effective dates to coincide with the publication of sectional charts, to the extent practicable; however, this consideration is accomplished after the NPRM comment period ends in the Final Rule. Substantive comments received to NPRMs, flight safety concerns, management of IFR operations at affected airports, and immediacy of required proposed airspace amendments are some of the factors that must be taken into consideration when selecting the appropriate effective date. After considering all factors, the FAA may determine that selecting an effective date that conforms to a 56-day en route chart cycle date that is not coincidental to sectional chart dates is better for the NAS and its users rather than awaiting the next sectional chart date.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class D airspace and Class E airspace extending upward from 700 feet or more above the surface of Mc Entire JNGB, due to the decommissioning of the Mc Entire NDB, and cancellation of the NDB approach. The changes enhance the safety and management of IFR operations at the airport.

The geographic coordinates of the Mc Entire JNGB, Shaw AFB, Sumter Airport, Sumter, and the Mc Entire JNGB TACAN also are adjusted to coincide with the FAA's aeronautical database, and the airport names are updated to Mc Entire JNGB (formerly Mc Entire ANGB), and Sumter Airport (formerly Sumter Municipal Airport). Also, this action updates the name of the Mc Entire ANGB TACAN navigation aid to the Mc Entire JNGB TACAN.

Finally, an editorial change is made to the airspace designation, removing the city from the airport name associated with Mc Entire JNGB and Shaw AFB to comply with a recent change to FAA Order 7400.2L, Procedures for Handling Airspace Matters.

Class D and E airspace designations are published in Paragraphs 5000 and 6005, respectively of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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 5–6.5a. 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).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Eastover, SC [Amended]

Mc Entire JNGB, SC
(Lat. 33°55′15″ N, long. 80°48′04″ W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.5-mile radius of Mc Entire JNGB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO SC E5 Sumter, SC [Amended]

Shaw AFB, SC
(Lat. 33°58′22″ N, long. 80°28′14″ W)
Mc Entire JNGB
(Lat. 33°55′15″ N, long. 80°48′04″ W)
Mc Entire JNGB TACAN
(Lat. 33°55′27″ N, long. 80°48′8″ W)
Sumter Airport, SC

(Lat. 33°59′42″ N, long. 80°21′41″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Shaw AFB and within a 6.8-mile radius of Mc Entire JNGB and within 3 miles each side of Mc Entire JNGB TACAN 138° radial, extending from the 6.8-mile radius to 12 miles southeast of the TACAN and within a 7-mile radius of Sumter Airport; excluding that airspace contained within Restricted Area R–6002 when it is in use.

Issued in College Park, Georgia, on August 22, 2018.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–18765 Filed 8–29–18; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 170906871–7871–01]

RIN 0694–AH46

Revisions to the Export Administration Regulations Based on the 2017 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2017 Plenary in Dublin, Ireland, and the May 2017 Technical Experts Meeting (TEM) in Stockholm, Sweden. This final rule revises seventeen Export Control Classification Numbers (ECCNs) to implement the changes that were agreed to at the meetings and to better align the missile technology (MT) controls on the Commerce Control List (CCL) with the MTCR Annex.

DATES: This rule is effective August 30, 2018.

FOR FURTHER INFORMATION CONTACT: Sharon Bragonje, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Phone: (202) 482–0434; Email: *sharon.bragonje@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR or Regime) is an export control arrangement among 35 nations, including most of the world's suppliers of advanced missiles and missile-related equipment, materials, software and technology. The regime establishes a common list of controlled items (the Annex) and a common export control policy (the Guidelines) that member countries implement in accordance with their national export controls. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons.

In 1993, the MTCR's original focus on missiles for nuclear weapons delivery was expanded to include the proliferation of missiles for the delivery of all types of weapons of mass destruction (WMD), *i.e.,* nuclear, chemical and biological weapons. Such proliferation has been identified as a threat to international peace and security. One way to address this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD. MTCR members voluntarily pledge to adopt the Regime's export Guidelines and to restrict the export of items contained in the Regime's Annex. The Regime's Guidelines are implemented through the national export control laws, regulations and policies of the regime members.

Amendments to the Export Administration Regulations (EAR)

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the October 2017 Plenary in Dublin, Ireland, and changes resulting from the May 2017 Technical Experts Meeting (TEM) in Stockholm, Sweden. References are provided below for the MTCR Annex changes agreed to at the meetings that correspond to the EAR revisions described below. This rule also makes changes to the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) to conform with the MTCR Annex. All of the changes in this final rule align the MT controls on the CCL with the MTCR Annex. In the discussion below, BIS identifies the origin of each change in the regulatory text of this final rule by using one the following parenthetical phrases: (Dublin 2017 Plenary), (Stockholm 2017 TEM), or (Changes to Align with MTCR Annex).

Amendments to the Commerce Control List (CCL)

This final rule amends the CCL to reflect changes to the MTCR Annex by amending seventeen ECCNs, as follows:

ECCN 1B117. This final rule amends ECCN 1B117 by revising the heading to remove the criteria for which ''batch mixers'' are controlled under this entry and moves the criteria to the new ''items'' paragraphs a and b in the List of Items Controlled section. This final rule, as a conforming change, redesignates existing ''items'' paragraphs a and b as paragraphs c and d (including redesignating the Note to paragraph b as Note to paragraph d), respectively, so that all criteria that identify ''batch mixers'' that are controlled under ECCN 1B117 are in the List of Items Controlled section. These changes involving the rearranging of the existing text are being made for clarity and consistency within the MTCR Annex (MTCR Annex Change, Category II: Item 4.B.3., Dublin 2017 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 1B118. This final rule amends ECCN 1B118 by revising the heading to remove the criteria for which ''continuous mixers'' are controlled under 1B118 and adds those criteria to the ''items'' paragraph in the List of Items Controlled section. This final rule revises ''items'' paragraphs a and b to include the control criteria that identify certain ''continuous mixers'' that are controlled under ECCN 1B118. This final rule, as a conforming change, also redesignates existing ''items'' paragraph b as paragraph c, which includes criteria that identify other ''continuous mixers'' that are controlled under ECCN 1B118. The changes to paragraph b, which this rule redesignates as ''items'' paragraph c.2, include making minor edits for clarity of the control parameters to more clearly identify the shafts controlled (MTCR Annex Change, Category II: Item 4.B.3.a., Dublin 2017 Plenary). These changes involving the rearranging of the existing text are being made for clarity and consistency within the MTCR Annex. These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 1C111. This final rule amends ECCN 1C111 by revising ''items'' paragraph a.1 in the List of Items Controlled section. In ''items'' paragraph a.1, this final rule removes the word ''percent'' and adds in its place the ''%'' sign in the phrase ''if at least 10 percent of the total weight.'' This change is being made for consistency with the MTCR Annex (Changes to Align with MTCR Annex). This is a clarification and will not change any scope of control. This change is not expected to have any impact on the number of license applications received by BIS.

ECCN 1C118. This final rule amends ECCN 1C118 by revising ''items'' paragraphs a.1, a.2, and a.3 in the List of Items Controlled section. In ''items'' paragraphs a.1 and a.2, this final rule removes the phrase ''weight percent'' and adds in its place the phrase ''% by weight.'' In ''items'' paragraph a.3, this final rule removes the phrase ''percent is austenite'' and adds in its place the ''%'' sign and for clarity moves the phrase ''is austenite'' to the end of the paragraph. These changes involving the rearranging of the existing text are being made for clarity and consistency with the MTCR Annex (MTCR Annex Change, Category II: Item 6.C.9., Dublin 2017 Plenary). This is a clarification and will not change any scope of control. These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 2B109. This final rule amends ECCN 2B109 by revising the heading, revising ''items'' paragraphs a and b in the List of Items Controlled section, and removing Technical Note 2 in the List of Items Controlled section. This final rule revises the introductory text of ''items'' paragraph a to incorporate the text from Technical Note 2 into the paragraph, creating positive and specific control text to identify the types of ''flow-forming machines'' that are controlled under ECCN 2B109. Only ''flow-forming machines'' that are usable in the ''production'' of propulsion components and equipment (*e.g.,* motor cases and interstages) for ''missiles'' will be controlled under ECCN 2B109. This rule includes a parenthetical phrase to provide two examples of the types of propulsion components and equipment being referenced in ECCN 2B109.a. This final rule also revises ''items'' paragraphs a.1 and a.2 to make minor clarifications in the control parameters. This final rule revises ''items'' paragraph a.1 to add the phrase ''equipped with or'' according to the manufacturer's technical specification, and removes the phrase ''can be'' and adds in its places the phrase ''capable of being'' equipped. This final rule removes the word ''have'' from the beginning of ''items'' paragraph a.2 because the introductory text of paragraph a already includes this word, so it is redundant in a.2. The final rule removes Technical Note 2 because the substance of this technical note is added to ''items'' paragraph a, which means the technical note is no longer needed. This final rule rewords the substance of Technical Note 2 added to the introductory text of ''items'' paragraph a for clarity and to remove the double negative (MTCR Annex Change, Category II: Item 3.B.3., Dublin 2017 Plenary).

In ECCN 2B109, this final rule revises the heading by removing the phrase ''and ''specially designed'' ''parts'' and ''components'' therefor.'' As a conforming change this final rule revises ''items'' paragraph b to add ''parts'' to the scope of this paragraph. These changes to the heading and ''items'' paragraph b do not change the scope of the ECCN, but rather clarify the intended scope of ECCN 2B109. This final rule corrects ''items'' paragraph b, so that an MT control on ''parts'' and ''components'' applies only to 2B009 machines that are controlled for MT reasons. The control text in the heading referring to ''parts'' and ''components'' is not needed, provided conforming edits were made to add ''parts'' to the scope of ''items'' paragraph b, which controlled ''components'' prior to publication of this final rule. This final rule also revises the heading to add the phrase ''as follows (see List of Items Controlled)'' to reflect that this ECCN includes an ''items'' paragraph (Changes to Align with MTCR Annex). These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 2B120. This final rule amends the heading of ECCN 2B120 by revising ''items'' paragraph a in the List of Items Controlled section to move the phrase ''or more'' to precede the term ''axes.'' The phrase ''two or more axes'' is clearer and more consistent within the MTCR Annex. The motion simulators and rate tables controlled under ''items'' paragraph a are those with two or more axes (MTCR Annex Change, Category I: Item 9.B.2.c, Dublin 2017 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 2B121. Similar to the change described above to ECCN 2B120, this final rule amends ECCN 2B121 by revising ''items'' paragraph a in the List of Items Controlled section to move the phrase ''or more'' to precede the term ''axes.'' The phrase ''two or more axes'' is clearer and more consistent within the MTCR Annex. The positioning tables controlled under ''items'' paragraph a are those with two or more axes (MTCR Annex Change, Category II: Item 9.B.2.d., Dublin 2017 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 2B122. This final rule amends ECCN 2B122 by revising the heading to remove the word ''above'' and add in its place the phrase ''greater than'' to clarify that centrifuges capable of imparting accelerations ''greater than'' 100 g are those that meet this portion of the control parameter. The word ''above'' also conveys the same meaning, but the phrase ''greater than'' is clearer and more consistent within the MTCR Annex (MTCR Annex Change, Category II: Item 9.B.2.e., Dublin 2017 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 6A107. This final rule amends ECCN 6A107 by adding a definition of 'Time to steady-state registration' to the Related Definitions paragraph in the List of Items Controlled section. As a conforming change, this final rule also revises the ''items'' paragraph a.2 in the List of Items Controlled section of ECCN 6A107 to add single quotation marks around the term 'time to steady-state registration' to indicate the term is defined for purposes of this ECCN under the Related Definitions paragraph (MTCR Annex Change, Category II: Item 12.A.3.a.2. Technical Note, Stockholm 2017 TEM). These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 7A105. This final rule amends ECCN 7A105 by revising the heading and the Related Definitions paragraph. This final rule revises the heading of ECCN 7A105 to remove the phrase ''Global Navigation Satellite Systems (GNSS),'' including the parenthetical phrase with examples of GNSS, and adds in its place the term 'navigation satellite systems.' This final rule amends ECCN 7A105 by adding a definition of 'Navigation satellite systems' to the Related Definitions paragraph in the List of Items Controlled section to define this term for purposes of this ECCN. The new definition of 'navigation satellite systems' specifies that these systems include global navigation satellite systems (GNSS) and regional navigation satellite systems (RNSS) and provides an illustrative list of such (GNSS, RNSS) systems (MTCR Annex Change, Category II: Item 11.A.3., Stockholm 2017 TEM and Dublin 2017 Plenary). These changes to ECCN 7A105 are being made in this final rule because the MTCR Annex entry that addresses receiving equipment for navigation satellite systems has been expanded to include regional navigation satellite systems, as well as listing the Chinese system ''BeiDou'' in the examples of GNSS. To accomplish this, as described above, this final rule in ECCN 7A105 adds a local definition of 'navigation satellite systems,' with expanded examples, to the Related Definitions paragraph in the List of Items Controlled. ECCN 7A105 does not

encompass all of the commodities specified under the MTCR Annex, Category II, Item 11.A.3 entry, because some of those commodities are ''subject to the ITAR.'' The existing Related Controls paragraph (2) in ECCN 7A105, as well as the Commerce Control List Order of Review in Supplement No. 4 to part 774 of the EAR already provides guidance on this, so no additional changes are needed in this rule to address that issue. This change is expected to result in an increase of one or fewer applications received annually by BIS, because of the generally low number of such items exported.

ECCN 7A107. This final rule amends ECCN 7A107 by revising ''items'' paragraph b in the List of Items Controlled section by removing the phrase ''capable of providing'' at the beginning of the paragraph. The phrase is not needed in order to convey the meaning of the control parameter and removing the phrase makes the control parameter text more precise. This change is made to conform to this MTCR Annex change. ECCN 7A107.a already reflects changes made in the MTCR Annex, and therefore, that ''items'' paragraph a did not need to be amended in this final rule (MTCR Annex Change, Category II: Item 9.A.8., Dublin 2017 Plenary). This is a clarification and will not change any scope of control. This change is not expected to have any impact on the number of license applications received by BIS.

ECCN 7A116. This final rule amends ECCN 7A116 by revising the heading; and adding a License Requirements section, License Exceptions section and List of Items Controlled section (MTCR Annex Change, Category II: Item 10.A., Notes, Dublin 2017 Plenary; and Changes to Align with MTCR Annex). This final rule, in order to fully reflect the commodities specified in the MTCR Annex, Category II: Item 10.A., revises ECCN 7A116 to control items that are not ''subject to the ITAR,'' but that would otherwise meet the description of items in the MTCR Annex, Category II: Item 10.A and the new control parameters this final rule adds to ECCN 7A116.

This final rule does this by revising the heading, which includes removing the parenthetical phrase that stated that all items in the heading were ''subject to the ITAR.'' As a conforming change, this final rule adds a Related Controls paragraph (2) to alert people to see United States Munitions List (USML) Category IV for items ''specially designed'' for use in rockets or missiles that are ''subject to the ITAR.'' This final rule also adds a Related Controls paragraph (1) to direct people to also see ECCNs 9A610.r and .s for items designated or modified for military UAVs. This final rule adds a license requirement for MT 1 and AT 1 for these commodities that this rule controls under ECCN 7A116.

This final rule adds ''items'' paragraphs a, b, and c to specify the commodities controlled under ECCN 7A116. This final rule, as described below in the changes this final rule makes to ECCN 9A012, removes the control parameters in ''items'' paragraph 9A012.b.5 and adds (moves) those to ECCN 7A116. These changes are appropriate because there are no similar controls in the Wassenaar Arrangement for these commodities that are specified on the MTCR Annex, and under the Commerce Control List Order of Review these items will be appropriately controlled under ECCN 7A116. The commodities this rule moves from 9A012.b.5 will no longer be controlled for national security (NS) reasons, but the commodities will be MT controlled. This final rule also adds a note at the end of the ''items'' paragraph in the List of Items Controlled section of ECCN 7A116 to specify that systems, equipment and valves designed or modified to enable operation of manned aircraft as unmanned aerial vehicles are included within the scope of this ECCN.

These changes are not expected to have any impact on the number of license applications received by BIS, because this equipment is not widely used or exported.

ECCN 9A012. This final rule amends ECCN 9A012 by revising the ''MT'' paragraph in the table in the License Requirements section and removing the ''items'' paragraph b.5 in the List of Items Controlled section. This final rule revises the MT controls paragraph to remove the term ''Air'' and add in its place ''Aerial'' in the term ''Unmanned Aerial Vehicles (UAVs).'' This change is made to conform to the MTCR Annex and other references in the EAR to UAVs. As a conforming change for the movement of commodities classified in 9A012.b.5, as described above for the changes this final rule makes to ECCN 7A116, this final rule revises the MT controls paragraph in ECCN 9A012 to remove the reference to ''9A012.b'' and add a reference in its place to ECCN 9A120. This final rule also revises the reasons for control in ECCN 9A012 to close a potential gap in the MT controls. If a UAV meets the requirements of ECCN 9A120, it would be controlled for MT reasons. However, as the text was written prior to publication of this final rule, if such a UAV met the requirements of 9A012.a, but did not have the range of 300 km, it would be controlled by 9A012.a and the MT control would no longer apply.

For the reasons discussed above regarding the changes to ECCN 7A116, this final rule makes a conforming change to remove ''items'' paragraph b.5 from the List of Items Controlled because these commodities will be controlled under ECCN 7A116 (MTCR Annex Change, Category II: Item 10.A., Notes, Dublin 2017 Plenary). These changes are expected to result in an increase of 1 or fewer applications received annually by BIS, because these are clarifying changes and reflects the current interpretation for where these commodities should be controlled under the EAR.

ECCN 9A101. This final rule amends ECCN 9A101 by revising the Related Definitions paragraph, revising ''items'' paragraph a, adding new ''items'' paragraphs a.3 and a.4, and revising ''items'' paragraph b in the List of Items Controlled section. These changes are being made to this entry to limit the control to those engines that are most likely to be used on MTCR controlled cruise missiles and unmanned aerial vehicles, and to remove controls from larger engines that are unlikely to be used on such systems. While larger civil certified engines were already excluded from control under ECCN 9A101, they were still controlled under ECCN 9A101 prior to completing the civil certification process (MTCR Annex Change, Category II: Item 3.A.1.a., Stockholm 2017 TEM).

This final rule revises the Related Definitions paragraph by removing the definition of 'maximum thrust value' and adding this definition as part of three new Technical Notes this final rule adds to ''items'' paragraph a in the List of Items Controlled section of ECCN 9A101. This final rule adds the definition of 'maximum thrust value' as Technical Note 1 and adds the phrase ''at sea level static conditions using ICAO standard atmosphere'' to the technical note to add greater specificity on the conditions under which the measurement needs to be taken for purposes of ECCN 9A101. This final rule also adds two new technical notes to ''items'' paragraph a; one for 'dry weight' (Technical Note 2) and a second for 'first-stage rotor diameter' (Technical Note 3). The definition of 'dry weight' in Technical Note 2 provides the criteria for what needs to be included in the measurement and specifies that the measurement should not include the nacelle (housing). The definition of 'first-stage rotor diameter' in Technical Note 3, will provide guidance on how

to measure the diameter of the first rotating stage of the engine.

The final rule revises the introductory text of ''items'' paragraph a to remove the word ''both'' and add in its place the word ''all.'' This is a conforming change because this rule adds new ''items'' paragraphs a.3 and a.4, and in order to be controlled under ECCN 9A101.a, the engine needs to meet all of the criteria in paragraphs a.1 to a.4. This final rule adds new ''items'' paragraphs a.3 and a.4, to include the criterion of 'dry weight' less than 750 kg as part of the criteria that need to be met for an engine to be controlled under ECCN 9A101.a. This final rule also adds a new ''items'' paragraph a.4 to include the criterion of the '''first-stage rotor diameter' less than 1 m'' as part of the criteria that need to be met for an engine to be controlled under ECCN 9A101.a. This final rule also revises ''items'' paragraph b, which functions as a catch-all for purposes of this ECCN for engines designed or modified for use in ''missiles'' or UAVs with a range equal to or greater than 300 km, to specify paragraph b is not limited by the 'dry weight' or the 'first-stage rotor diameter' of the engine. This final rule also revises paragraph b to add the phrase ''or UAVs with a range equal to or greater than 300 km'' after the term ''missiles.'' The change to add the phrase ''UAVs with a range equal to or greater than 300 km'' is being made for consistency with the MTCR Annex (Changes to Align with MTCR Annex).

These changes are expected to result in a decrease of no more than 1 to 3 applications received annually by BIS.

ECCN 9A115. This final rule amends ECCN 9A115 by revising the heading; and adding a License Requirements section, License Exceptions section and List of Items Controlled section (Changes to Align with MTCR Annex). This final rule also revises the heading of ECCN 9A115 by removing the parenthetical phrase at the end of the heading that references items controlled in ECCN 9A610 and others that are ''subject to the ITAR.'' The parenthetical phrase was added to ECCN 9A115 in a November 21, 2016 final rule (81 FR 83124). This final rule retains this cross reference between the USML and the CCL, but moves the substance of this text from the heading of ECCN 9A115 to the new Related Controls paragraph added by this rule to the License Requirements section of 9A115. The other changes this final rule makes to ECCN 9A115 are needed because some of the commodities described in the heading of ECCN 9A115 are neither ''subject to the ITAR'' nor controlled in ECCN 9A610.u, but would otherwise meet the control parameters in the heading of ECCN 9A115. Consistent with the CCL Order of Review (*See* Supplement 4 to part 774), and to align with the MTCR Annex, this rule makes it clear that such commodities are controlled under 9A115. These changes are expected to result in an increase of 1 or fewer applications received annually by BIS, due to the low volume of such items exported.

ECCN 9A515. This final rule amends ECCN 9A515 by adding a new ''items'' paragraph h to control spacecraft thrusters for MT reasons. This final rule also revises the ''MT'' paragraph in the table in the License Requirements section to specify that the MT control applies to spacecraft thrusters controlled in 9A515.h when the total impulse capacity is equal to or greater than 8.41x10^5. These changes are needed to clarify which of the satellite thrusters are subject to the EAR. On January 10, 2017, Commerce published a final rule (82 FR 2875) that moved these thrusters from the USML to the CCL, and the Department of State published a corresponding rule (82 FR 2889) removing the thrusters from the ITAR. As a consequence of those rules, the public sought clarification from BIS on what items were actually ''subject to the EAR.''

Consistent with the Commerce January 10, 2017 final rule, the Department of State has informed Commerce that it intends to clarify that the existing USML IV(d) paragraph does not control spacecraft thrusters, and that such thrusters are ''subject to the EAR.'' Commerce agrees with the Department of State that adding a note to the USML clarifying these controls will assist exporters in better determining the control jurisdiction of the spacecraft thrusters that were moved from the USML to the CCL in the January 10, 2017 final rule.

The questions raised by the public and discussions between the Department of Commerce and State, including the discussions regarding the spacecraft thruster controls, identified a need to add an MT control to the spacecraft thrusters to align with the MTCR Annex. Following the USML Order of Review and CCL Order of Review, these spacecraft thrusters were, prior to publication of this final rule, controlled under ''items'' paragraph x of ECCN 9A515. Because ''items'' paragraph x is not MT controlled, this final rule adds a separate ''items'' paragraph h to ECCN 9A515 to allow for the imposition of an MT control on these spacecraft thrusters to align with the MTCR Annex (Changes to Align with MTCR Annex). Finally, as a conforming change consistent with the addition of ''items'' paragraph h, this final rule reserves ''items'' paragraphs i through w. These changes are expected to result in an annual increase of twelve license applications received by BIS.

ECCN 9A610. This final rule amends ECCN 9A610 by making revisions to the ''items'' paragraph (MTCR Annex Change, Category II: Item 10.A., Notes, Dublin 2017 Plenary). This final rule redesignates ''items'' paragraph w as ''items'' paragraph w.1 and creates new ''items'' paragraph w.2 in ECCN 9A610, including redesignating Note to paragraph w, as Note to paragraph w.1. In addition to this redesignation, this final rule removes the term ''drones'' from ''items'' paragraph w.1 and the Note to paragraph w.1 because the MTCR Annex does not use the term ''drones,'' other than stating that drones are a type of UAV, and therefore the term does not need to be included in ''items'' paragraph w.1 or in the Note. This final rule for the same reason also removes the term ''drones'' from ''items'' paragraphs u and v, including in the Note to paragraph u and Note to paragraph v (Changes to Align with MTCR Annex). This final rule also adds a new ''items'' paragraph w.2, to control for MT reasons, flight control servo valves designed or modified for the systems in 9A610.w.1, and the additional criteria this final rule includes in new ''items'' paragraph w.2. This final rule makes these changes in ECCN 9A610 in order to accommodate the new ''items'' paragraph w.2, which corresponds to MTCR Annex, Category II, Item 10.A.3, but had not previously been listed on the CCL.

This final rule also adds a Note to paragraphs w.1 and w.2 to specify that these two ''items'' paragraphs include systems, equipment and valves designed or modified to enable operation of manned aircraft as unmanned aerial vehicles. The addition of the note will clarify that the controls include equipment when used for the conversion of a manned aircraft to operate as a UAV. Some of this type of equipment is ''subject to the ITAR,'' and some of this type of equipment is ''subject to the EAR.'' Prior to publication of this final rule, the type of equipment referenced in ECCN 7A116 made it appear that all of this type of equipment was ''subject to the ITAR,'' which is correct for certain equipment, but not for all such equipment. For example, some of this equipment prior to publication of this final rule was controlled in ECCN 9A610.w. The changes described above that this final rule makes to ECCNs 7A116 and 9A610, will make needed corrections to clarify

where this type of equipment is controlled on the CCL.

Prior to publication of this rule, some of the equipment specified in MTCR Annex, Category II, Item 10.A.3. was not controlled on the CCL. While ECCN 9A106 has an entry for the equipment used in liquid propulsion systems for rockets, there was not a corresponding entry listing the equipment used in UAVs. To correct this gap in coverage, this final rule adds the criteria in MTCR Annex, Category II, 10.A.3. to ECCNs 7A116 and 9A610, as described above.

These changes are not expected to have any impact on the number of license applications received by BIS due to the low volume of such items exported.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or enroute aboard a carrier to a port of export or reexport, on August 30, 2018, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before October 1, 2018. Any such items not actually exported or reexported before midnight, on October 1, 2018, require a license in accordance with this rule.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (Title XVII, Subtitle B of Pub. L. 115–232) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2018, 83 FR 39871 (August 13, 2018)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Executive Order Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action'' under Executive Order 12866. The MTCR was formed in 1987 by the U.S. and G–7 countries (Canada, France, Germany, Italy, Japan, and the UK) to address the increasing proliferation of nuclear weapons by addressing the most destabilizing delivery system for such weapons. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons. The proliferation of such weapons has been identified as a threat to domestic and international peace and security. Commerce estimates this rule will not change the number of license requests received by BIS annually.

This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

For the purposes of E.O. 13771, this rule is issued with respect to a national security function of the United States. The cost-benefit analysis indicates the rule is intended to improve national security as its primary direct benefit, and the regulation qualifies for a good cause exception under 5 U.S.C. 553(b)(B). Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing E.O 13771, and is, therefore, exempt from the requirements of E.O. 13771.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This regulation involves a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 43.8 minutes for a manual or electronic submission for a total burden estimate of 31,833 hours. BIS expects the burden hours associated with this collection to increase slightly by ten hours for an estimated cost increase of $378. This increase is not expected to exceed the existing estimates currently associated with OMB control number 0694–0088. Although this final rule makes important changes to the EAR for items controlled for missile technology reasons, Commerce believes the overall increase in costs and burdens due to this rule will be minimal.

Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

The provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this action involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international commitments to the MTCR. The MTCR contributes to international peace and security by promoting greater responsibility in transfers of missile technology items that could make a contribution to delivery systems (other than manned aircraft) for weapons of mass destruction. The MTCR consists of 35 member countries acting on a consensus basis. The changes discussed in this rule implement agreements reached at the October 2017 Plenary in Dublin, Ireland, and the May 2017 Technical Experts Meeting in Stockholm, Sweden. Since the United States is a significant exporter of the items discussed in this rule, implementation of this provision is

necessary for the MTCR to achieve its purpose.

Although the APA requirements in section 553 are not applicable to this action under the provisions of paragraph (a)(1), this action also falls within two other exceptions in the section. The subsection (b) requirement that agencies publish a notice of proposed rulemaking that includes information on the public proceedings does not apply when an agency for good cause finds that the notice and public procedures are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the finding (and reasons therefor) in the rule that is issued (5 U.S.C. 553(b)(B)). In addition, the section 553(d) requirement that publication of a rule shall be made not less than 30 days before its effective date can be waived if an agency finds there is good cause to do so.

The section 553 requirements for notice and public procedures and for a delay in the date of effectiveness do not apply to this rule, as there is good cause to waive such practices. Delay in implementation would be contrary to the public interest because it would disrupt the movement of these potentially national and international security threatening items globally, creating disharmony between export control measures implemented by MTCR members. Export controls work best when all countries implement the same export controls in a timely manner. Delaying this rulemaking would prevent the United States from fulfilling its commitment to the MTCR in a timely manner, would injure the credibility of the United States in this and other multilateral regimes, and could impair the international community's ability to effectively control the export of certain potentially national and international security threatening items. Therefore, this regulation is issued in final form, and is effective August 30, 2018.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: Pub. L. 115–232, Title XVII, Subtitle B. 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2018, 83 FR 39871 (August 13, 2018).

■ 2. In Supplement No. 1 to part 774, Category 1, revise Export Control Classification Number (ECCN) 1B117 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1B117 Batch mixers having all of the following (see List of Items Controlled), and ''specially designed'' ''parts'' and ''components'' therefor.

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See 1B115, 1B118, and 1B119.
Related Definitions: N/A
Items:

a. Capable of mixing under vacuum in the range from zero to 13.326 kPa;

b. Capable of controlling the temperature of the mixing chamber;

c. A total volumetric capacity of 110 liters (30 gallons) or more; *and*

d. At least one 'mixing/kneading shaft' mounted off center.

Note to paragraph d: In 1B117.d. the term 'mixing/kneading shaft' does not refer to deagglomerators or knife-spindles.

■ 3. In Supplement No. 1 to part 774, Category 1, revise ECCN 1B118 to read as follows:

1B118 Continuous mixers having all of the following (see List of Items Controlled), and ''specially designed'' ''parts'' and ''components'' therefor.

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See 1B115, 1B117, and 1B119.
Related Definitions: N/A
Items:

a. Capable of mixing under vacuum in the range from zero to 13.326 kPa;

b. Capable of controlling the temperature of the mixing chamber; *and*

c. Either of the following:

c.1. Two or more mixing/kneading shafts; *or*

c.2. A single rotating and oscillating shaft with kneading teeth/pins as well as kneading teeth/pins inside the casing of the mixing chamber.

■ 4. In Supplement No. 1 to part 774, Category 1, revise ECCN 1C111 to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, NP, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
NP applies to 1C111.a.3.f only.	NP Column 1
RS applies to 1C111.d.3 only.	RS Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: (1) See USML Category V(e)(7) for controls on HTPB (hydroxyl terminated polybutadiene) with a hydroxyl functionality equal to or greater than 2.2 and less than or equal to 2.4, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30 °C of less than 47 poise (CAS # 69102–90–5). (2) See USML Category V(f)(3) for controls on ferrocene derivatives, including butacene. (3) See ECCN 1C608 for controls on oxidizers that

are composed of fluorine and also other halogens, oxygen, or nitrogen, except for chlorine trifluoride, which is controlled under this ECCN 1C111.a.3.f. (4) See ECCN 1C011.b for controls on boron and boron alloys not controlled under this ECCN 1C111.a.2.b. (5) See USML Category V(d)(10) for controls on Inhibited Red Fuming Nitric Acid (IRFNA) (CAS 8007–58–7).

Related Definitions: Particle size is the mean particle diameter on a weight or volume basis. Best industrial practices must be used in sampling, and in determining particle size, and the controls may not be undermined by the addition of larger or smaller sized material to shift the mean diameter.

Items:

a. Propulsive substances:

a.1. Spherical or spheroidal aluminum powder (C.A.S. 7429–90–5) in particle size of less than 200 x 10^{-6} m (200 μm) and an aluminum content of 97% by weight or more, if at least 10% of the total weight is made up of particles of less than 63 μm, according to ISO 2591–1:1988 or national equivalents.

Technical Note: A particle size of 63 μm (ISO R–565) corresponds to 250 mesh (Tyler) or 230 mesh (ASTM standard E–11).

a.2. Metal powders and alloys where at least 90% of the total particles by particle volume or weight are made up of particles of less than 60 μ (determined by measurement techniques such as using a sieve, laser diffraction or optical scanning), whether spherical, atomized, spheroidal, flaked or ground, as follows:

a.2.a. Consisting of 97% by weight or more of any of the following:

a.2.a.1. Zirconium (C.A.S. #7440–67–7);

a.2.a.2. Beryllium (C.A.S. #7440–41–7); *or*

a.2.a.3. Magnesium (C.A.S. #7439–95–4);.

a.2.b. Boron or boron alloys with a boron content of 85% or more by weight.

Technical Note: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

Note: In a multimodal particle distribution (e.g., mixtures of different grain sizes) in which one or more modes are controlled, the entire powder mixture is controlled.

a.3. Oxidizer substances usable in liquid propellant rocket engines, as follows:

a.3.a. Dinitrogen trioxide (CAS 10544–73–7);

a.3.b. Nitrogen dioxide (CAS 10102–44–0)/dinitrogen tetroxide (CAS 10544–72–6);

a.3.c. Dinitrogen pentoxide (CAS 10102–03–1);

a.3.d. Mixed oxides of nitrogen (MON);

a.3.e. [RESERVED];

a.3.f. Chlorine trifluoride (ClF_3).

Technical Note: Mixed oxides of nitrogen (MON) are solutions of nitric oxide (NO) in dinitrogen tetroxide/nitrogen dioxide (N_2O_4/NO_2) that can be used in missile systems. There are a range of compositions that can be denoted as MONi or MONij, where i and j are integers representing the percentage of nitric oxide in the mixture (e.g., MON3 contains 3% nitric oxide, MON25 25% nitric oxide. An upper limit is MON40, 40% by weight).

b. Polymeric substances:

b.1. Carboxy-terminated polybutadiene (including carboxyl-terminated polybutadiene) (CTPB);

b.2. Hydroxy-terminated polybutadiene (including hydroxyl-terminated polybutadiene) (HTPB) (CAS 69102–90–5), except for hydroxyl-terminated polybutadiene as specified in USML Category V (see 22 CFR 121.1) (also see Related Controls Note #1 for this ECCN);

b.3. Polybutadiene acrylic acid (PBAA);

b.4. Polybutadiene acrylic acid acrylonitrile (PBAN) (CAS 25265–19–4/CAS 68891–50–9);

b.5. Polytetrahydrofuran polyethylene glycol (TPEG).

Technical Note: Polytetrahydrofuran polyethylene glycol (TPEG) is a block copolymer of poly 1,4-Butanediol (CAS 110–63–4) and polyethylene glycol (PEG) (CAS 25322–68–3).

c. Other propellant energetic materials, additives, or agents:

c.1. [RESERVED]

c.2. Triethylene glycol dinitrate (TEGDN);

c.3. 2 Nitrodiphenylamine (2-NDPA);

c.4. Trimethylolethane trinitrate (TMETN);

c.5. Diethylene glycol dinitrate (DEGDN).

d. Hydrazine and derivatives as follows:

d.1. Hydrazine (C.A.S. #302–01–2) in concentrations of 70% or more;

d.2. Monomethyl hydrazine (MMH) (C.A.S. #60–34–4);

d.3. Symmetrical dimethyl hydrazine (SDMH) (C.A.S. #540–73–8);

d.4. Unsymmetrical dimethyl hydrazine (UDMH) (C.A.S. #57–14–7);

d.5. Trimethylhydrazine (C.A.S. #1741–01–1);

d.6. Tetramethylhydrazine (C.A.S. #6415–12–9);

d.7. N,N diallylhydrazine (CAS 5164–11–4);

d.8. Allylhydrazine (C.A.S. #7422–78–8);

d.9. Ethylene dihydrazine (CAS 6068–98–0);

d.10. Monomethylhydrazine dinitrate;

d.11. Unsymmetrical dimethylhydrazine nitrate;

d.12. 1,1-Dimethylhydrazinium azide (CAS 227955–52–4)/1,2-Dimethylhydrazinium azide (CAS 299177–50–7);

d.13. Hydrazinium azide (C.A.S. #14546–44–2);

d.14. Hydrazinium dinitrate (CAS 13464–98–7);

d.15. Diimido oxalic acid dihydrazine (C.A.S. #3457–37–2);

d.16. 2-hydroxyethylhydrazine nitrate (HEHN);

d.17. Hydrazinium diperchlorate (C.A.S. #13812–39–0);

d.18. Methylhydrazine nitrate (MHN) (CAS 29674–96–2);

d.19. 1,1-Diethylhydrazine nitrate (DEHN)/1,2-Diethylhydrazine nitrate (DEHN) (CAS 363453–17–2);

d.20. 3,6-dihydrazino tetrazine nitrate (DHTN), also referred to as 1,4-dihydrazine nitrate.

■ 5. In Supplement No. 1 to part 774, Category 1, revise ECCN 1C118 to read as follows:

1C118 Titanium-stabilized duplex stainless steel (Ti-DSS), having all of the following characteristics (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. Having all of the following characteristics:

a.1. Containing 17.0–23.0% by weight of chromium and 4.5–7.0% by weight of nickel;

a.2. Having a titanium content of greater than 0.10% by weight; *and*

a.3. A ferritic-austenitic microstructure (also referred to as a two-phase microstructure) of which at least 10% by volume (according to ASTM E–1181–87 or national equivalents) is austenite; *and*

b. Having any of the following forms:

b.1. Ingots or bars having a size of 100 mm or more in each dimension;

b.2. Sheets having a width of 600 mm or more and a thickness of 3 mm or less; *or*

b.3. Tubes having an outer diameter of 600 mm or more and a wall thickness of 3 mm or less.

■ 6. In Supplement No. 1 to part 774, Category 2, revise ECCN 2B109 to read as follows:

2B109 Flow-forming machines, other than those controlled by 2B009, as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, NP, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
NP applies to items controlled by this entry that meet or exceed the technical parameters in 2B209.	NP Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: (1) See ECCN 2D101 for ''software'' for items controlled under this entry. (2) See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E101 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 2B009 and 2B209.
Related Definitions: N/A
Items:

a. Flow-forming machines, usable in the ''production'' of propulsion components and equipment (*e.g.,* motor cases and interstages) for ''missiles'', having all of the following:

a.1. Equipped with, or according to the manufacturer's technical specification are capable of being equipped with, ''numerical control'' units or a computer control, even when not equipped with such units at delivery; *and*

a.2. More than two axes which can be coordinated simultaneously for ''contouring control.''

b. ''Specially designed'' ''parts'' and ''components'' for flow-forming machines controlled in 2B009 for MT reasons or 2B109.a.

Technical Note: 1. Machines combining the function of spin-forming and flow-forming are for the purpose of 2B109 regarded as flow-forming machines.

■ 7. In Supplement No. 1 to part 774, Category 2, revise ECCN 2B120 to read as follows:

2B120 Motion simulators or rate tables (equipment capable of simulating motion), having all of the following characteristics (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: (1) Rate tables not controlled by 2B120 and providing the characteristics of a positioning table are to be evaluated according to 2B121. (2) Equipment that has the characteristics specified in 2B121, which also meets the characteristics of 2B120 will be treated as equipment specified in 2B120. (3) See also 2B008, 2B121, 7B101 and 7B994.
Related Definitions: N/A
Items:

a. Two or more axes;

b. Designed or modified to incorporate sliprings or integrated non-contact devices capable of transferring electrical power, signal information, or both; *and*

c. Having any of the following characteristics:

c.1. For any single axis having all of the following:

c.1.a. Capable of rates of rotation of 400 degrees/s or more, or 30 degrees/s or less, *and*

c.1.b. A rate resolution equal to or less than 6 degrees/s and an accuracy equal to or less than 0.6 degrees/s; *or*

c.2. Having a worst-case rate stability equal to or better (less) than plus or minus 0.05% averaged over 10 degrees or more; *or*

c.3. A positioning ''accuracy'' equal to or better than 5 arc-second.

Note: 2B120 does not control rotary tables designed or modified for machine tools or for medical equipment. For controls on machine tool rotary tables see 2B008.

■ 8. In Supplement No. 1 to part 774, Category 2, revise ECCN 2B121 to read as follows:

2B121 Positioning tables (equipment capable of precise rotary position in any axis), other than those controlled in 2B120, having all the following characteristics (See List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: (1) Equipment that has the characteristics specified in 2B121, which also meets the characteristics of 2B120 will be treated as equipment specified in 2B120. (2) See also 2B008, 2B120, 7B101, and 7B994.
Related Definitions: N/A
Items:

a. Two or more axes; *and*

b. A positioning ''accuracy'' equal to or better than 5 arc-second.

Note: 2B121 does not control rotary tables designed or modified for machine tools or for medical equipment. For controls on machine tool rotary tables see 2B008.

■ 9. In Supplement No. 1 to part 774, Category 2, revise ECCN 2B122 to read as follows:

2B122 Centrifuges capable of imparting accelerations greater than 100 g and designed or modified to incorporate sliprings or integrated non-contact devices capable of transferring electrical power, signal information, or both.

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See also 7B101.
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 10. In Supplement No. 1 to part 774, Category 6, revise ECCN 6A107 to read as follows:

6A107 Gravity meters (gravimeters) or gravity gradiometers, other than those controlled by 6A007, designed or modified for airborne or marine use, as follows, (see List of Items Controlled) and ''specially designed'' ''parts'' and ''components'' therefor.

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See USML Category XII(d) for certain gravity meters (gravimeters) or gravity gradiometers subject to the ITAR. See also ECCN 7A611.
Related Definitions: 'Time to steady-state registration' (also referred to as the gravity meter's response time) is the time over which the disturbing effects of platform-induced acceleration (high frequency noise) are reduced.
Items:

a. Gravity meters having all the following:

a.1. A static or operational accuracy equal to or less (better) than 0.7 milligal (mgal); *and*

a.2. A 'time to steady-state registration' of two minutes or less.

b. Gravity gradiometers.

■ 11. In Supplement No. 1 to part 774, Category 7, revise ECCN 7A105 to read as follows:

7A105 Receiving equipment for 'navigation satellite systems' designed or modified for airborne applications and capable of providing navigation information at speeds in excess of 600 m/s (1,165 nautical mph), and ''specially designed'' ''parts'' and ''components'' therefor.

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: (1) See also 7A005 and 7A994. (2) See Categories XI and XV of the U.S. Munitions List (22 CFR 121.1) for controls on similar equipment ''specially designed'' for defense articles.
Related Definitions: 'Navigation satellite systems' include Global Navigation Satellite Systems (GNSS; *e.g.,* GPS, GLONASS, Galileo or BeiDou) and Regional Navigation Satellite Systems (RNSS; *e.g.,* NavIC, QZSS).
Items:

The list of items controlled is contained in the ECCN heading.

■ 12. In Supplement No. 1 to part 774, Category 7, revise ECCN 7A107 to read as follows:

7A107 Three axis magnetic heading sensors having all of the following characteristics (see List of Items Controlled), and ''specially designed'' ''parts'' and ''components'' therefor.

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. Internal tilt compensation in pitch (+/−90 degrees) and roll (+/−180 degrees) axes;

b. Azimuthal accuracy better (less) than 0.5 degrees rms at latitudes of +/−80 degrees, referenced to local magnetic field; *and*

c. Designed or modified to be integrated with flight control and navigation systems.

Note: Flight control and navigation systems in 7A107 include gyrostabilizers, automatic pilots and inertial navigation systems.

■ 13. In Supplement No. 1 to part 774, Category 7, revise ECCN 7A116 to read as follows:

7A116 Flight control systems and ''parts'' and ''components'', as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: (1) See 9A610.r. and 9A610.s. for items designed or modified for military UAVs. (2) See USML Category IV for items ''specially designed'' for use in rockets or missiles that are ''subject to the ITAR.''
Related Definitions: N/A
Items:

a. Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) designed or modified for UAVs capable of delivering at least 500 kilograms of payload to a range of at least 300 km, other than those controlled by either USML paragraph VIII(a) or ECCN 9A610.a;

b. Attitude control equipment designed or modified for UAVs capable of delivering at least 500 kilograms of payload to a range of at least 300 km, other than those controlled by either USML paragraph VIII(a) or ECCN 9A610.a;

c. Flight control servo valves designed of modified for the systems in 7A116.a. or 7A116.b, and designed or modified to operate in a vibration environment greater than 10 g rms over the entire range between 20Hz and 2 kHz.

Note: This entry includes the systems, equipment and valves designed or modified to enable operation of manned aircraft as unmanned aerial vehicles.

■ 14. In Supplement No. 1 to part 774, Category 9, revise ECCN 9A012 to read as follows:

9A012 Non-military ''Unmanned Aerial Vehicles,'' (''UAVs''), unmanned ''airships'', related equipment and ''components'', as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
MT applies to non-military Unmanned Aerial Vehicles (UAVs) and Remotely Piloted Vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload, and UAVs that meet the requirements of 9A120.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See the U.S. Munitions List Category VIII (22 CFR part 121). Also see ECCN 9A610 and § 744.3 of the EAR.
Related Definitions: N/A
Items:

a. ''UAVs'' or unmanned ''airships'', designed to have controlled flight out of the direct 'natural vision' of the 'operator' and having any of the following:

a.1. Having all of the following:

a.1.a. A maximum 'endurance' greater than or equal to 30 minutes but less than 1 hour; *and*

a.1.b. Designed to take-off and have stable controlled flight in wind gusts equal to or exceeding 46.3 km/h (25 knots); *or*

a.2. A maximum 'endurance' of 1 hour or greater;

Technical Notes:

1. For the purposes of 9A012.a, 'operator' is a person who initiates or commands the ''UAV'' or unmanned ''airship'' flight.

2. For the purposes of 9A012.a, 'endurance' is to be calculated for ISA conditions (ISO 2533:1975) at sea level in zero wind.

3. For the purposes of 9A012.a, 'natural vision' means unaided human sight, with or without corrective lenses.

b. Related equipment and ''components'', as follows:

b.1 [Reserved]

b.2. [Reserved]

b.3. Equipment or ''components'' ''specially designed'' to convert a manned ''aircraft'' or a manned ''airship'' to a ''UAV'' or unmanned ''airship'', controlled by 9A012.a;

b.4. Air breathing reciprocating or rotary internal combustion type engines, ''specially designed'' or modified to

propel ''UAVs'' or unmanned ''airships'', at altitudes above 15,240 meters (50,000 feet).

■ 15. In Supplement No. 1 to part 774, Category 9, revise ECCN 9A101 to read as follows:

9A101 Turbojet and turbofan engines, other than those controlled by 9A001, as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: 9A101.b controls only engines for non-military unmanned aerial vehicles [UAVs] or remotely piloted vehicles [RPVs], and does not control other engines designed or modified for use in ''missiles'', which are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).
Related Definitions: N/A
Items:

a. Engines having all of the following characteristics:

a.1. 'Maximum thrust value' greater than 400 N (achieved un-installed) excluding civil certified engines with a maximum thrust value greater than 8,890 N (achieved un-installed);

a.2. Specific fuel consumption of 0.15 kg N^{-1} h^{-1} or less (at maximum continuous power at sea level static conditions using the ICAO standard atmosphere);

a.3. 'Dry weight' less than 750 kg; *and*

a.4. 'First –stage rotor diameter' less than 1 m; *or*

Technical Notes:

1. 'Maximum thrust value' in 9A101.a.1 is the manufacturer's demonstrated maximum thrust for the engine type un-installed at sea level static conditions using the ICAO standard atmosphere. The civil type certified thrust value will be equal to or less than the manufacturer's demonstrated maximum thrust for the engine type.

2. 'Dry weight' is the weight of the engine without fluids (fuel, hydraulic fluid, oil, etc.) and does not include the nacelle (housing).

3. 'First-stage rotor diameter' is the diameter of the first rotating stage of the engine, whether a fan or compressor, measured at the leading edge of the blade tips.

b. Engines designed or modified for use in ''missiles'' or UAVs with a range equal to or greater than 300 km, regardless of thrust, specific fuel consumption, 'dry weight' or 'first-stage rotor diameter'.

■ 16. In Supplement No. 1 to part 774, Category 9, revise ECCN 9A115 to read as follows:

9A115 Apparatus, devices and vehicles, designed or modified for the transport, handling, control, activation and launching of rockets, missiles, and unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km.

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See the U.S. Munitions List (22 CFR part 121). Also see ECCN 9A610.u.
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 17. In Supplement No. 1 to part 774, Category, revise ECCN 9A515 to read as follows:

9A515 ''Spacecraft'' and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	*Country chart (see Supp. No.1 to part 738)*
NS applies to entire entry, except .e and .y.	NS Column 1
RS applies to entire entry, except .e and .y.	RS Column 1
RS applies to 9A515.e.	RS Column 2
MT applies to micro-circuits in 9A515.d and 9A515.e.2 when ''usable in'' ''missiles'' for protecting ''missiles'' against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). MT also applies to 9A515.h when the total impulse capacity is equal to or greater than 8.41x10∧5 newton seconds.	MT Column 1
AT applies to entire entry.	AT Column 1

License Requirement Note: The Commerce Country Chart is not used for determining license requirements for commodities classified in ECCN 9A515.a.1, .a.2, .a.3, .a.4, and .g. See § 742.6(a)(8), which specifies that such commodities are subject to a worldwide license requirement.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ''spacecraft'' in ECCN 9A515.a.1, .a.2, .a.3, or .a.4, or items in 9A515.g, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and ''600 series'' items). (2) License Exception STA may not be used if the ''spacecraft'' controlled in ECCN 9A515.a.1, .a.2, .a.3, or .a.4 contains a separable or removable propulsion system enumerated in USML Category IV(d)(2) or USML Category XV(e)(12) and designated MT. (3) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A515.

List of Items Controlled

Related Controls: Spacecraft, launch vehicles and related articles that are enumerated in the USML, and technical data (including ''software'') directly related thereto, and all services (including training) directly related to the integration of any satellite or spacecraft to a launch vehicle, including both planning and onsite support, or furnishing any assistance (including training) in the launch failure analysis or investigation for items in ECCN 9A515.a, are ''subject to the ITAR.'' All other ''spacecraft,'' as enumerated below and defined in § 772.1, are subject to the controls of this ECCN. See also ECCNs 3A001, 3A002, 3A991, 3A992, 6A002,

6A004, 6A008, and 6A998 for specific ''space-qualified'' items, 7A004 and 7A104 for star trackers, and 9A004 for the International Space Station (ISS), the James Webb Space Telescope (JWST), and ''specially designed'' ''parts'' and ''components'' therefor. See USML Category XI(c) for controls on ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers that are ''specially designed'' for defense articles. See ECCN 9A610.g for pressure suits used for high altitude aircraft.

Related Definitions: 'Microcircuit' means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit.

Items:

''Spacecraft'' and other items described in ECCN 9A515 remain subject to the EAR even if exported, reexported, or transferred (in-country) with defense articles ''subject to the ITAR'' integrated into and included therein as integral parts of the item. In all other cases, such defense articles are subject to the ITAR. For example, a 9A515.a ''spacecraft'' remains ''subject to the EAR'' even when it is exported, reexported, or transferred (in-country) with a ''hosted payload'' described in USML Category XV(e)(17) incorporated therein. In all other cases, a ''hosted payload'' performing a function described in USML Category XV(a) always remains a USML item. The removal of the defense article subject to the ITAR from the spacecraft is a retransfer under the ITAR and would require an ITAR authorization, regardless of the CCL authorization the spacecraft is exported under. Additionally, transfer of technical data regarding the defense article subject to the ITAR integrated into the spacecraft would require an ITAR authorization.

a. ''Spacecraft,'' including satellites, and space vehicles, whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV or described in ECCN 9A004.u or .w, that:

a.1. Have electro-optical remote sensing capabilities and having a clear aperture greater than 0.35 meters, but less than or equal to 0.50 meters;

a.2. Have remote sensing capabilities beyond NIR (*i.e.,* SWIR, MWIR, or LWIR);

a.3. Have radar remote sensing capabilities (*e.g.,* AESA, SAR, or ISAR) having a center frequency equal to or greater than 1.0 GHz, but less than 10.0 GHz and having a bandwidth equal to or greater than 100 MHz, but less than 300 MHz;

a.4. Provide space-based logistics, assembly, or servicing of another ''spacecraft''; *or*

a.5. Are not described in ECCN 9A515.a.1, .a.2, .a.3 or .a.4.

Note: ECCN 9A515.a includes commercial communications satellites, remote sensing satellites, planetary rovers, planetary and interplanetary probes, and in-space habitats, not identified in ECCN 9A004 or USML Category XV(a).

b. Ground control systems and training simulators ''specially designed'' for telemetry, tracking, and control of the ''spacecraft'' controlled in paragraphs 9A004.u or 9A515.a.

c. [Reserved]

d. Microelectronic circuits (*e.g.,* integrated circuits, microcircuits, or MOSFETs) and discrete electronic components rated, certified, or otherwise specified or described as meeting or exceeding all the following characteristics and that are ''specially designed'' for defense articles, ''600 series'' items, or items controlled by ECCNs 9A004.v or 9A515:

d.1. A total dose of 5×10^5 Rads (Si) (5×10^3 Gy (Si));

d.2. A dose rate upset threshold of 5×10^8 Rads (Si)/sec (5×10^6 Gy (Si)/sec);

d.3. A neutron dose of 1×10^{14} n/cm^2 (1 MeV equivalent);

d.4. An uncorrected single event upset sensitivity of 1×10^{-10} errors/bit/day or less, for the CRÈME–MC geosynchronous orbit, Solar Minimum Environment for heavy ion flux; *and*

d.5. An uncorrected single event upset sensitivity of 1×10^{-3} errors/part or less for a fluence of 1×10^7 protons/cm^2 for proton energy greater than 50 MeV.

e. Microelectronic circuits (*e.g.,* integrated circuits, microcircuits, or MOSFETs) and discrete electronic components that are rated, certified, or otherwise specified or described as meeting or exceeding the characteristics in either paragraph e.1 or e.2, AND ''specially designed'' for defense articles controlled by USML Category XV or items controlled by ECCNs 9A004.u or 9A515:

e.1. A total dose $\geq 1 \times 10^5$ Rads (Si) (1×10^3 Gy(Si)) and $< 5 \times 10^5$ Rads (Si) (5×10^3 Gy(Si)); and a single event effect (SEE) (*i.e.,* single event latchup (SEL), single event burnout (SEB), or single event gate rupture (SEGR)) immunity to a linear energy transfer (LET) $\geq$80 MeV$-$cm2/mg; or

e.2. A total dose $\geq 5 \times 10^5$ Rads (Si) (5×10^3 Gy (Si)) and not described in 9A515.d.

Note 1 to 9A515.d and .e: Application specific integrated circuits (ASICs), integrated circuits developed and produced for a specific application or function, specifically designed or modified for defense articles and not in normal commercial use are controlled by Category XI(c) of the USML regardless of characteristics.

Note 2 to 9A515.d and .e: See 3A001.a for controls on radiation-hardened microelectronic circuits ''subject to the EAR'' that are not controlled by 9A515.d or 9A515.e

f. Pressure suits (*i.e.,* space suits) capable of operating at altitudes 55,000 feet above sea level.

g. Remote sensing components ''specially designed'' for ''spacecraft'' described in ECCNs 9A515.a.1 through 9A515.a.4 as follows:

g.1. Space-qualified optics (*i.e.,* lens, mirror, membrane having active properties (*e.g.,* adaptive, deformable)) with the largest lateral clear aperture dimension equal to or less than 0.35 meters; or with the largest clear aperture dimension greater than 0.35 meters but less than or equal to 0.50 meters;

g.2. Optical bench assemblies ''specially designed'' for ECCN 9A515.a.1, 9A515.a.2, 9A515.a.3, or 9A515.a.4 ''spacecraft;'' *or*

g.3. Primary, secondary, or hosted payloads that perform a function of ECCN 9A515.a.1, 9A515.a.2, 9A515.a.3, or 9A515.a.4 ''spacecraft.''

h. Spacecraft thrusters using bi-propellants or mono-propellants that provide thrust equal to or less than 150 lbf (*i.e.,* 667.23 N) vacuum thrust.

i. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for defense articles controlled by USML Category XV or items controlled by 9A515, and that are NOT:

x.1. Enumerated or controlled in the USML or elsewhere within ECCNs 9A515 or 9A004;

x.2. Microelectronic circuits and discrete electronic components;

x.3. Described in ECCNs 7A004 or 7A104;

x.4. Described in an ECCN containing ''space-qualified'' as a control criterion (*i.e.,* 3A001.b.1, 3A001.e.4, 3A002.g.1, 3A991.o, 3A992.b.3, 6A002.a.1, 6A002.b.2, 6A002.d.1, 6A004.c and .d, 6A008.j.1, 6A998.b, or 7A003.d.2);

x.5. Microwave solid state amplifiers and microwave assemblies (refer to ECCN 3A001.b.4 for controls on these items);

x.6. Travelling wave tube amplifiers (refer to ECCN 3A001.b.8 for controls on these items); or

x.7. Elsewhere specified in ECCN 9A515.y.

Note to 9A515.x: ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in USML subcategory XV(e) or enumerated in other USML categories are subject to the controls of that paragraph or category.

y. Items that would otherwise be within the scope of ECCN 9A515.x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y.

y.1. Discrete electronic components not specified in 9A515.e;

y.2. Space grade or for spacecraft applications thermistors;

y.3. Space grade or for spacecraft applications RF microwave bandpass ceramic filters (Dielectric Resonator Bandpass Filters);

y.4. Space grade or for spacecraft applications hall effect sensors;

y.5. Space grade or for spacecraft applications subminiature (SMA and SMP) plugs and connectors, TNC plugs and cable and connector assemblies with SMA plugs and connectors; *and*

y.6. Space grade or for spacecraft applications flight cable assemblies.

■ 18. In Supplement No. 1 to part 774, Category 9, revise ECCN 9A610 to read as follows:

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y.	NS Column 1
RS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y.	RS Column 1
MT applies to 9A610.t, .u, .v, and .w.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A610.y.	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 9A610.a (*i.e.,* ''end item'' military aircraft), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for ''600 series'' end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A610.

List of Items Controlled

Related Controls: (1) Military aircraft and related articles that are enumerated in USML Category VIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for controls on foreign-made ''military commodities'' that incorporate more than a de minimis amount of U.S.-origin ''600 series'' controlled content. (3) See USML Category XIX and ECCN 9A619 for controls on military aircraft gas turbine engines and related items.

Related Definitions: In paragraph .y of this entry, the term 'fluid' includes liquids and gases.

Items:

a. 'Military Aircraft' ''specially designed'' for a military use that are not enumerated in USML paragraph VIII(a).

Note 1: For purposes of paragraph .a the term 'military aircraft' means the LM–100J aircraft and any aircraft ''specially designed'' for a military use that are not enumerated in USML paragraph VIII(a). The term includes: Trainer aircraft; cargo aircraft; utility fixed wing aircraft; military helicopters; observation aircraft; military non-expansive balloons and other lighter than air aircraft; and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are ''unmodified'' for the purposes of this paragraph .a.

Note 2: 9A610.a does not control 'military aircraft' that:

a. Were first manufactured before 1946;

b. Do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; *and*

c. Do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

b. L–100 aircraft manufactured prior to 2013.

c.–d. [Reserved]

e. Mobile aircraft arresting and engagement runway systems for aircraft controlled by either USML Category VIII(a) or ECCN 9A610.a.

f. Pressure refueling equipment and equipment that facilitates operations in confined areas, ''specially designed'' for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete parachute canopies, harnesses, platforms, electronic release mechanisms, ''specially designed'' for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and ''equipment'' ''specially designed'' for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, ''specially designed'' for use by a military.

k. through s. [Reserved]

t. Composite structures, laminates, and manufactures thereof ''specially designed'' for unmanned aerial vehicles controlled under USML Category VIII(a) with a range equal to or greater than 300 km.

Note to paragraph .t: Composite structures, laminates, and manufactures thereof ''specially designed'' for unmanned aerial vehicles controlled under USML Category VIII(a) with a maximum range less than 300 km are controlled in paragraph .x of this entry.

u. Apparatus and devices ''specially designed'' for the handling, control, activation and non-ship-based launching of UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.

Note to paragraph .u: Apparatus and devices ''specially designed'' for the handling, control, activation and non-ship-based launching of UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a with a maximum range less than 300 km are controlled in paragraph .x of this entry.

v. Radar altimeters designed or modified for use in UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .v: Radar altimeters designed or modified for use in UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a. that are not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

w.1. Pneumatic hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .w.1: Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a., not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

w.2. Flight control servo valves designed or modified for the systems in 9A610.w.1. and designed or modified to operate in a vibration environment greater than 10g rms over the entire range between 20Hz and 2 kHz.

Note to paragraph .w: Paragraphs 9A610.w.1. and 9A610.w.2. include the systems, equipment and valves designed or modified to enable operation of manned aircraft as unmanned aerial vehicles.

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 9A610 (except for 9A610.y) or a defense article enumerated or otherwise described in USML Category VIII and not elsewhere specified on the USML or in 9A610.y, 9A619.y, or 3A611.y.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this entry, ECCN 9A619, or for a defense article in USML Categories VIII or XIX and not elsewhere specified in the USML or the CCL, and other aircraft commodities ''specially designed'' for a military use, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1. Aircraft tires;

y.2. Analog gauges and indicators;

y.3. Audio selector panels;

y.4. Check valves for hydraulic and pneumatic systems;

y.5. Crew rest equipment;

y.6. Ejection seat mounted survival aids;

y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);

y.8. Fluid filters and filter assemblies;

y.9. Galleys;

y.10. Fluid hoses, straight and unbent lines (for a commodity subject to control in this entry or defense article in USML Category VIII), and fittings, couplings, clamps (for a commodity subject to control in this entry or defense article in USML Category VIII) and brackets therefor;

y.11. Lavatories;

y.12. Life rafts;

y.13. Magnetic compass, magnetic azimuth detector;

y.14. Medical litter provisions;

y.15. Cockpit or cabin mirrors;

y.16. Passenger seats including palletized seats;

y.17. Potable water storage systems;

y.18. Public address (PA) systems;

y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);

y.20. Underwater locator beacons;

y.21. Urine collection bags/pads/cups/pumps;

y.22. Windshield washer and wiper systems;

y.23. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;

y.24. Lead-acid and Nickel-Cadmium batteries;

y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;

y.26. Fire extinguishers;

y.27. Flame and smoke/CO_2 detectors;

y.28. Map cases;

y.29. 'Military Aircraft' that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation;

y.30. ''Parts,'' ''components,'' ''accessories,'' and ''attachments,'' other than electronic items or navigation equipment, for use in or with a commodity controlled by ECCN 9A610.h;

y.31. Identification plates and nameplates; *and*

y.32. Fluid manifolds.

Dated: August 24, 2018.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2018–18849 Filed 8–29–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 10486]

RIN 1400–AE70

Continued Temporary Modification of Category XI of the United States Munitions List

AGENCY: Department of State.

ACTION: Final rule; notice of temporary modification.

SUMMARY: The Department of State, pursuant to its regulations and in the interest of the security of the United States, temporarily modifies paragraph (b) in Category XI of the United States Munitions List (USML).

DATES: Amendatory instructions 1 and 2 are effective August 30, 2018. Amendatory instruction No. 3 is effective August 30, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Monjay, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2817; email *monjayr@state.gov.* ATTN: Temporary Modification of Category XI.

SUPPLEMENTARY INFORMATION: On July 1, 2014, the Department published a final rule revising Category XI of the USML, 79 FR 37536, effective December 30, 2014. That final rule, consistent with the two prior proposed rules for USML Category XI (78 FR 45018, July 25, 2013 and 77 FR 70958, November 28, 2012), revised paragraph (b) of Category XI to clarify the extent of control and maintain the existing scope of control on items described in paragraph (b) and the directly related software described in paragraph (d).

The Department later determined that exporters may read the revised control language to exclude certain intelligence-analytics software that has been and remains controlled on the USML. Therefore, the Department determined that it was in the interest of the security of the United States to temporarily revise USML Category XI paragraph (b), pursuant to the provisions of § 126.2, while a long-term solution was developed. The Department published a final rule on July 2, 2015 (80 FR 37974) that temporarily modified USML Category XI(b) until December 29, 2015. The Department published a final rule on December 16, 2015 (80 FR 78130) that continued the July 2, 2015 modification to August 30, 2017. The Department published a final rule on August 30, 2017 (82 FR 41172) that continued the December 16, 2015 modification to August 30, 2018.

The temporary revision clarified that the scope of control in existence prior to December 30, 2014 for USML paragraph (b) and directly related software in paragraph (d) remains in effect. This clarification is achieved by reinserting the words ''analyze and produce information from'' and by adding software to the description of items controlled.

The Department, with its interagency partners, continues to develop a long term solution for USML Category XI(b). However, that solution will not be in place when the current temporary modification expires on August 30, 2018. Therefore, the Department has determined, for the national security and foreign policy of the United States and in the best interest of the U.S. defense industry, to publish a final rule that extends the temporary modification of USML XI(b) for one year, to August 30, 2019, to allow it to be revised as part of the wholesale revision of USML Category XI. On February 12, 2018, the Department published a Notice of Inquiry (83 FR 5970) requesting public comment on USML Categories V, X and XI. The Department and the interagency are reviewing the public comments submitted in response, and the Department is drafting a proposed rule setting out revised versions of the three categories for public comment. Extending the temporary revisions of USML Category XI(b) now will allow the U.S. government to finalize its review of USML Category XI, with rulemaking to follow, to include any further modifications to USML Category XI paragraph (b) as may be warranted.

Regulatory Findings

Administrative Procedure Act

This rulemaking is exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as a military or foreign affairs function of the United States Government.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments.

Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Department does not believe this rulemaking is a major rule under the criteria of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking is a significant but not an economically significant rule, under the criteria of Executive Order 12866, and is consistent with the provisions of Executive Order 13563.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. chapter 35.

Executive Order 13771

This rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017).

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

For reasons stated in the preamble, the State Department amends 22 CFR part 121 as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. In § 121.1, under Category XI, revise paragraph (b), effective August 30, 2018, to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XI—Military Electronics

* * * * *

* (b) Electronic systems, equipment or software, not elsewhere enumerated in this subchapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit, or analyze and produce information from, the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.

* * * * *

■ 3. In § 121.1, under Category XI, revise paragraph (b), effective August 30, 2019, to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XI—Military Electronics

* * * * *

* (b) Electronic systems or equipment, not elsewhere enumerated in this subchapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.

* * * * *

Dated: August 27, 2018.

Andrea Thompson,

Under Secretary of State for Arms Control and International Security, U.S. Department of State.

[FR Doc. 2018–19029 Filed 8–29–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0608]

RIN 1625–AA08

Special local regulation; Battle of the Bridges, Intracoastal Waterway; Venice, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain waters of the Intracoastal Waterway. This action is necessary to provide for the safety of life on these navigable waters in Venice, FL, during the Battle of the Bridges on September 15, 2018. This regulation prohibits persons and vessels from being in the race area unless authorized by the Captain of the Port St. Petersburg (COTP) or a designated representative.

DATES: This rule is effective from 7 a.m. until 7:30 p.m. on September 15, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0608 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Michael Shackleford, U.S. Coast Guard; telephone 813–228–2191, email *Michael.D.Shackleford@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On November 7, 2017, the Sarasota Scullers Youth Rowing Program notified the Coast Guard that it will be conducting the Battle of the Bridges sculler race from 7 a.m. to 7:30 p.m. on September 15, 2018. The race will take place in portions of the Intracoastal Waterway in Venice, FL. In response, on August 7, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Battle of the Bridges,

Intracoastal Waterway, Venice, FL (83 FR 38670) There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended August 22, 2018, we did not receive any comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the running of the event on September 15, 2018.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port St. Petersburg (COTP) has determined that potential hazards associated with the race to be a safety concern for anyone within area where the race is taking place. The purpose of this rule is to ensure safety of vessels and the navigable waters in the special local regulation during the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM, which was published on August 7, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation from 7 a.m. to 7:30 p.m. on September 15, 2018. The regulation would cover a race which would take place on approximately 3.5 miles of the Intracoastal Waterway starting near the Shamrock Park & Nature Center and ending near the Tamiami Trail Bridge in Venice, FL. The duration of the regulation is intended to ensure the safety of vessels and these navigable waters during the scheduled 7 a.m. to 7:30 p.m. race. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. Persons or vessels receiving permission to enter the regulated area must comply with the instructions of the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Vessel traffic will be able to safely transit through this regulated area for urgent situations with COTP approval which impacts a designated area of the Intracoastal Waterway for 12.5 hours. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulation, and the rule allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation which temporarily limits access to race participants only in certain portions of the Intracoastal Waterway in Venice, FL, except in emergency situations. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.35T07–0195 to read as follows:

§ 100.35T07–0195 Special local regulation; Battle of the Bridges, Intracoastal Waterway; Venice, FL.

(a) *Regulated area.* A regulated area is established to include a race area located on all waters of the Intracoastal Waterway south of a line made connecting the following points: 27°06′15″ N, 082°26′43″ W, to position 27°06′12″ N, 082°26′43″ W, and all waters of the Intracoastal Waterway north of a line made connecting the following points: 27°03′21″ N, 082°26′17″ W, to position 27°03′19″ N, 082°26′15″ W. All coordinates are North American Datum 1983.

(b) *Definitions.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area unless authorized by the Captain of the Port (COTP) St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the race area may contact the COTP St. Petersburg by telephone at (727) 824–7506 or via VHF–FM radio Channel 16 to request authorization.

(3) If authorization to enter, transit through, anchor in, or remain within the race area is granted, all persons and vessels receiving such authorization shall comply with the instructions of the COTP or a designated representative.

(4) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced from 7 a.m. until 7:30 p.m. on September 15, 2018.

Holly L. Najarian,

Captain, U.S. Coast Guard, Captain of the Port Saint Petersburg.

[FR Doc. 2018–18771 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2018–0496]

2018 Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas

AGENCY: Coast Guard, DHS.

ACTION: Notification of expired temporary rules issued.

SUMMARY: This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register.** This document lists temporary safety zones, security zones, special local regulations, drawbridge operation regulations and regulated navigation areas, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective, primarily during the period between April 2018 and June 2018, unless otherwise indicated, and were terminated before they could be published in the **Federal Register.**

ADDRESSES: Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Yeoman First Class David Hager, Office of Regulations and Administrative Law, telephone (202) 372–3862.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. *Regulated Navigation Areas* are water areas within a defined boundary for which regulations for vessels navigating within the area have been established by the regional Coast Guard District Commander.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of

these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the end of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

The following unpublished rules were temporarily in effect during the period between April 2018 and June 2018, unless otherwise indicated. To view copies of these rules, visit *www.regulations.gov* and search by the docket number indicated in the following table.

Docket No.	Type	Location	Effective date
USCG–2017–1014	Safety Zones	Tumon, GU	12/31/2017
USCG–2018–0069	Safety Zones	Chicago, IL	3/5/2018
USCG–2018–0162	Safety Zones	Chicago, IL	3/10/2018
USCG–2017–0965	Safety Zones	Fear River, NC	4/1/2018
USCG–2018–0217	Safety Zones	Galveston, TX	4/4/2018
USCG–2018–0161	Safety Zones	Channohon, IL	4/6/2018
USCG–2018–0032	Safety Zones	Charleston, SC	4/7/2018
USGC–2018–0230	Safety Zones	Tanapag Harbor, Saipan	4/7/2018
USCG–2018–0249	Safety Zones	Long Beach, NY	4/7/2018
USCG–2018–0015	Safety Zones	Tuscaloosa, AL	4/12/2018
USCG–2018–0056	Safety Zones	Charleston, SC	4/12/2018
USCG–2018–0231	Safety Zones	Corpus Christi, TX	4/14/2018
USCG–2018–0306	Safety Zones	Marinette, WI	4/14/2018
USCG–2018–0344	Security Zones	Palm Beach, FL	4/15/2018
USCG–2018–0357	Safety Zones	Marinette, WI	4/17/2018
USCG–2018–0076	Safety Zones	Cairo, IL	4/19/2018
USCG–2017–1076	Special Local Regulations	Miami, FL	4/22/2018
USCG–2018–0081	Safety Zones	Myrtle Beach, SC	4/22/2018
USCG–2018–0255	Special Local Regulations	Key West, FL	4/27/2018
USCG–2018–0256	Safety Zones	Key West, FL	4/28/2018
USCG–2018–0375	Safety Zones	Piti, GU	5/1/2018
USCG–2018–0124	Special Local Regulations	Harford, MD	5/5/2018
USCG–2018–0377	Safety Zones	Parish, LA	5/6/2018
USCG–2018–0334	Safety Zones	New Orleans, LA	5/7/2018
USCG–2018–0215	Safety Zones	Washington, DC	5/10/2018
USCG–2018–0374	Safety Zones	Apra Outer Harbor, GU	5/15/2018
USCG–2018–0417	Safety Zones	Vieques, Puerto Rico	5/18/2018
USCG–2018–0093	Special Local Regulations	Cambridge, MD	5/20/2018
USCG–2018–0210	Safety Zones	Cocoa Beach, FL	5/20/2018
USCG–2018–0351	Safety Zones	Tampa, FL	5/22/2018
USCG–2018–0474	Security Zones	New London, CT	5/23/2018
USCG–2017–1078	Safety Zones	Calcaieu Parish, LA	5/25/2018
USCG–2012–1036	Special Local Regulations	Sector Long Island	5/25/2018
USCG–2018–0462	Special Local Regulations	Miami, FL	5/25/2018
USCG–2018–0381	Safety Zones	Alexandria Bay, NY	5/26/2018
USCG–2018–0510	Safety Zones	Lake Huron	5/30/2018
USCG–2018–0482	Safety Zones	Seattle, WA	5/30/2018
USCG–2018–0222	Safety Zones	Jacksonville, FL	6/1/2018
USCG–2018–0358	Special Local Regulations	New London, CT	6/9/2018
USCG–2016–0509	Security Zones	North Shore, Guam	6/12/2018
USCG–2018–0373	Safety Zones	Philadelphia, PA	6/13/2018
USCG–2018–0027	Safety Zones	Inlet, WA	6/14/2018
USCG–2018–0314	Special Local Regulations	St. Petersburg, FL	6/15/2018
USCG–2018–0554	Drawbridges	Sacramento, CA	6/16/2018
USCG–2018–0570	Safety Zones	Chester, WV	6/16/2018
USCG–2018–0557	Safety Zones	Newburg, MD	6/16/2018
USCG–2018–0595	Safety Zones	Superior, WI	6/17/2018
USCG–2018–0589	Safety Zones	Mobile, AL	6/19/2018
USCG–2018–0296	Special Local Regulations	Ocean City, MD	6/23/2018
USCG–2018–0174	Safety Zones	Seattle, Washington	6/26/2018
USCG–2018–0367	Safety Zones	Philadelphia, PA	6/30/2018

Dated: August 27, 2018.

Katia Kroutil,

Office Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2018–18852 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0729]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Fort Pierce, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Fort Pierce North Causeway A1A Bridge (Banty Sanders) across the Atlantic Intracoastal Waterway (AICW), mile 964.8 at Fort Pierce, St Lucie County FL. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. This deviation will allow the bridge to remain in the closed to navigation position from 7 a.m. to 7 p.m.

DATES: This deviation is effective from 7 a.m. on September 1, 2018 to 7 a.m. on February 28, 2019. Comments and related material must reach the Coast Guard on or before January 1, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0729 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email LT Samuel Rodrigues-Gonzalez, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305–535–4307, email *Samuel.Rodriguez-Gonzalez@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

The Fort Pierce North Causeway A1A Bridge (Banty Sanders) across the AICW, mile 964.8 in Fort Pierce, St Lucie County, FL is a bascule bridge. It has a vertical clearance of 26 feet at mean high water in the closed position and a horizontal clearance of 90 feet. The bridge currently operates under 33 CFR 117.5. There has been a large increase in vehicular traffic over the bridge in recent years due to large areas along the beach being developed for residential homes. This test deviation would provide for the bridge to operate on an advertised schedule for openings. The draw shall open on signal; except that, from 7 a.m. to 7 p.m. Monday through Friday except Federal Holidays, Saturdays and Sundays, the draw will open three times per hour: On the hour, 20 minutes past the hour and 40 minutes past the hour. Vessels in distress, public vessels of the United States, and tugs with tows must be passed at any time.

This waterway is utilized by vessels of the United States, commercial vessels, as well as recreational vessels. There is no alternate route for vessels desiring to travel north in the AICW. Vessels that may pass through the bridge without a requested opening may do so at any time.

The Coast Guard will also inform the users of the waterways through our

Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this document as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Dated: August 27, 2018.

Barry Dragon,

Director, Bridge Branch, Seventh Coast Guard District.

[FR Doc. 2018–18820 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0714]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, New Smyrna Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the George Musson/Coronado Beach (SR 44) Bridge across the Atlantic Intracoastal Waterway, mile 845, New Smyrna Beach, FL. The deviation is necessary to accommodate painting of the bridge. This deviation allows the bridge to remain in the closed to navigation position from 7 p.m. to 7 a.m. nightly Sunday through Friday.

DATES: This deviation is effective without actual notice from August 30, 2018 through 6 p.m. on December 15, 2018. For the purposes of enforcement, actual notice will be used from 7 p.m. on August 13, 2018, until August 30, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0714 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email MST1 Jeremy Bailey, Coast Guard Sector Jacksonville Waterways Management; telephone (904) 714–7631, email *Jeremy.S.Bailey@uscg.mil.*

SUPPLEMENTARY INFORMATION: Florida Department of Transportation (FDOT) via Southern Road and Bridge LLC, has requested a temporary deviation from the operation that govern the George Musson/Coronado Beach (SR 44) bridge over the Atlantic Intracoastal Waterway, mile 845. This deviation is necessary to facilitate the painting of the bridge and safety of the work crew. The bridge is a single-leaf bascule bridge and has a vertical clearance in the closed to navigation position of 24 feet at mean high water. The vertical clearance of the bridge will be reduced by 3 feet to 21 feet mean high water through the completion of the painting project in December of 2018.

The current operating schedule is set out in 33 CFR 117.261(h). Under this temporary deviation, the bridge will remain in the closed to navigation position from 7 p.m. to 7 a.m. nightly Sunday through Friday. The bridge will open every 3 hours at 10 p.m., 1 a.m., 4 a.m. and 7 a.m. with a one (1) hour notification. This section of the Atlantic Intracoastal Waterway is predominantly used by a variety of vessels including U.S. government vessels, small commercial vessels and recreational vessels. The Coast Guard has carefully considered the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 27, 2018.

Barry L. Dragon,

Director, Bridge Branch, Seventh Coast Guard District.

[FR Doc. 2018–18821 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0773]

Safety Zones; Fireworks Displays in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for a fireworks display taking place over the Patapsco River, Baltimore, MD, on September 15, 2018. This action is necessary to ensure safety of life on navigable waterways during the fireworks display. Our regulation for recurring safety zones for fireworks displays within the Fifth Coast Guard District identifies the regulated area for this fireworks display. During the enforcement period, vessels may not enter, remain in, or transit through the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or designated representative on scene.

DATES: The regulations in 33 CFR 165.506 will be enforced for the location listed at (b)(4) in the table to § 165.506 from 7:30 p.m. through 9:30 p.m. on September 15, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region (WWM Division); telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for entry (b)(4) in the table to § 165.506 for the Defenders' Day Commemoration Fireworks display from 7:30 p.m. through 9:30 p.m. on September 15, 2018. This action is being taken to provide for the safety of life on navigable waterways during the fireworks display. Our regulation for recurring safety zones for fireworks displays within the Fifth Coast Guard District, § 165.506, specifies the location of the regulated area for this safety zone within a 300-yard radius of the fireworks barge in approximate position 39°15′55″ N, 076°34′35″ W, adjacent to the East Channel of Northwest Harbor. As specified in § 165.506(d), during the enforcement period, no vessel may enter, remain in, or transit through the safety zone without approval from the Captain of the Port Sector Maryland-National Capital Region (COTP) or designated Coast Guard patrol personnel on scene. Designated Coast Guard patrol personnel are comprised of commissioned, warrant, and petty officers of the U.S. Coast Guard. The Coast Guard may be assisted by other federal, state, or local law enforcement agencies in the enforcement of the safety zone. This year the fireworks display is happening on the third Saturday in September (September 15, 2018) instead of the second Saturday in September (September 8, 2018) as published in the table to 33 CFR 165.506, section (b), row 4. The enforcement period is also being changed for this year's event. This year, the safety zone will be enforced from 7:30 p.m. through 9:30 p.m. on September 15, 2018.

This notice of enforcement is issued under authority of 33 CFR 165.506(d) and 5 U.S.C. 552(a). In addition to this notice of enforcement published in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: August 24, 2018.

Joseph B. Loring,

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

[FR Doc. 2018–18824 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0707]

RIN 1625–AA00

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan, near Chicago, IL. This zone is necessary to protect spectators and vessels from potential hazards associated with a competition involving motorized personal vehicles on Lake Michigan. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan.

DATES: This rule is effective from 7 a.m. on September 1, 2018 through 5:30 p.m. on September 2, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–

0707 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT John Ramos, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2155, email *D09-DG-MSUChicago-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The details of the event were not provided to the Coast Guard in sufficient time to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect the public, mariners, vessels, and property from the hazards associated with this event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.1. The Coast Guard will enforce a safety zone from 7 a.m. through 5:30 p.m. on September 1, 2018 and September 2, 2018 in the vicinity 31st Street Harbor, Chicago IL, for a competition utilizing motorized personal watercraft. The Captain of the Port Lake Michigan has determined that a competition of this nature proximate to a gathering of watercraft proses a significant risk to public safety and property. Such hazards include potential for collision with spectators and participants. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the competition takes place.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on September 1, 2018 through 5:30 p.m. on September 2, 2018. The safety zone will encompass all navigable waters of Lake Michigan bounded by a line drawn from the position 41°49.903′ N, 087°36.161′ W, then northeast to 41°50.029′ N, 087°35.863′ W, then southeast to 41°49.576′ N, 087°35.503′ W, then southwest to 41°49.484′ N, 087°35.850′ W, then along the shoreline back to the point of origin (NAD 83).

No vessel or person will be permitted to enter the safety zone without obtaining permission from the Captain of the Port Lake Michigan or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16 or at (414) 747–7182.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

The safety zone created by this rule will be relatively small and enforced from 7 a.m. through 5:30 p.m. on September 1, 2018 and September 2, 2018. Moreover, the Coast Guard will issue Broadcast Notice to Mariners (BNM) via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone on Lake Michigan in Chicago, IL. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0707 to read as follows:

§ 165.T09–0707 Safety zone; Lake Michigan, Chicago, Illinois.

(a) *Location.* All navigable waters of Lake Michigan near Chicago, Illinois, bounded by a line drawn position 41°49.903′ N, 087°36.161′ W, then northeast to 41°50.029′ N, 087°35.863′ W, then southeast to 41°49.576′ N, 087°35.503′ W, then southwest to 41°49.484′ N, 087°35.850′ W, then along the shoreline back to the point of origin (NAD 83).

(b) *Enforcement period.* This rule will be enforced from 7 a.m. through 5:30 p.m. on September 1, 2018 and September 2, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16 or at (414) 747–7182. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: August 6, 2018.

Thomas J. Stuhlreyer,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2018–18850 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0350; FRL–9982–47—Region 6]

Approval and Promulgation of Implementation Plans; Oklahoma; General SIP Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for Oklahoma submitted by the State of Oklahoma designee with a letter dated February 14, 2017. The submittal includes updates to the Oklahoma SIP, as contained in annual SIP updates for 2013, 2014, 2015, and 2016, and incorporates the latest changes to EPA regulations. This action addresses the revisions submitted to the Oklahoma SIP pertaining to incorporation by reference of federal requirements and emission inventory reporting requirements.

DATES: This rule is effective on October 1, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No.EPA–R06–OAR–2018–0350. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, 214–665–2115, *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our July 6, 2018, proposal at 83 FR 31511. In that document, we proposed to approve revisions to the Oklahoma SIP submitted by letter dated February 14, 2017, from the Oklahoma Secretary of Energy and Environment that pertain to incorporation by reference of federal requirements and emission inventory reporting requirements. Specifically, we proposed to approve the revisions to Subchapter 2, Subchapter 5, and Appendix Q under Title 252, Chapter 100 of the Oklahoma Administrative Code (OAC).

We received two comments on our July 6, 2018, proposal. One commenter provided personal observations regarding former EPA Administrator Scott Pruitt. One commenter provided comments about reducing greenhouse gas emissions through forest management practices. Neither of these comments is relevant to our proposed rulemaking to approve the updates to the incorporation by reference of federal requirements or updates to the Oklahoma emission inventory reporting requirements. Since these comments are not relevant to the specific action EPA proposed, the EPA will not be responding to these comments or making any changes to our proposed rulemaking because of these comments.

II. Final Action

We are approving revisions to the Oklahoma SIP that revise the incorporation by reference dates for federal requirements and update the emission inventory reporting requirements. We have determined that these revisions, submitted by Oklahoma on February 14, 2017, were developed in accordance with the CAA and EPA's regulations. Therefore, under section 110 of the Act, the EPA approves the following revisions to the Oklahoma SIP:

- Revisions to OAC 252:100–2–3 and Appendix Q adopted on April 25, 2013; effective July 1, 2013;
- Revisions to OAC 252:100–2–3 and Appendix Q adopted on June 19, 2014; effective September 12, 2014;
- Revisions to OAC 252:100–2–3 and Appendix Q adopted on June 8, 2015; effective September 15, 2015;
- Revisions to OAC 252:100–2–3 and Appendix Q adopted on June 9, 2016; effective September 15, 2016;
- Revisions to OAC 252:100–5–2 adopted on June 19, 2014; effective September 12, 2014;
- Revisions to OAC 252:100–5–2.1 adopted on June 19, 2014; effective September 12, 2014;
- Revisions to OAC 252:100–5–2.1 adopted June 9, 2016; effective September 15, 2016; and
- Revisions to OAC 252:100–5–3 adopted on June 19, 2014; effective September 12, 2014.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Oklahoma regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact Adina Wiley for more information). Therefore, these materials have been approved by the EPA for inclusion in the Oklahoma SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of this final rulemaking, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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, 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 rule 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 23, 2018.

Anne Idsal,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart LL—Oklahoma

■ 2. In § 52.1920(c), the table titled ''EPA Approved Oklahoma Regulations'' is amended by revising the entries for Sections 252:100–2–3; 252:100–5–2; 252:100–5–2.1; 252:100–5–3; and 252:100, Appendix Q to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED OKLAHOMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
252:100–2–3	Incorporation by reference	9/15/2016	8/30/2018, [Insert **Federal Register** citation].	
*	*	*	*	*
252:100–5–2	Registration of potential sources of air contaminants.	9/12/2014	8/30/2018, [Insert **Federal Register** citation].	
252:100–5–2.1	Emission inventory	9/15/2016	8/30/2018, [Insert **Federal Register** citation].	
*	*	*	*	*
252:100–5–3	Confidentiality of proprietary information.	9/12/2014	8/30/2018, [Insert **Federal Register** citation].	
*	*	*	*	*
252:100, Appendix Q	Incorporation by reference	9/15/2016	8/30/2018, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2018–18657 Filed 8–29–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID: FEMA–2018–0015]

RIN 1660–AA94

Removal of Dispute Resolution Pilot Program for Public Assistance Appeals

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is removing its regulations regarding its Dispute Resolution Pilot Program (DRPP) for the Public Assistance Program. The statutory authority for the DRPP sunset on December 31, 2015.

DATES: This rule is effective August 30, 2018.

ADDRESSES: The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at *http://www.regulations.gov* and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Liza Davis, Associate Chief Counsel, Regulatory Affairs, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW,

Washington, DC 20472, 202–646–4046, or (email) *liza.davis@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 1105 of the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113–2, 127 Stat. 43 (Jan. 29, 2013), 42 U.S.C. 5189a note, directed FEMA to establish a Dispute Resolution Pilot Program (DRPP). The DRPP allowed applicants to choose arbitration by an independent review panel in lieu of a second appeal to resolve disputes relating to Public Assistance projects. FEMA published a final rule on August 16, 2013 (78 FR 49950) to establish the DRPP. The regulation is located at 44 CFR 206.210.

Under section 1105 of SRIA, the authority to accept requests for arbitration pursuant to the DRPP sunset on December 31, 2015. FEMA did not receive any requests for arbitration under the DRPP. As the authority for the DRPP has sunset, FEMA is now removing the regulations from the CFR.

Regulatory Analysis

Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** and provide interested persons the opportunity to submit comments. See 5 U.S.C. 553(b) and (c). The APA provides an exception to this requirement for rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A). The final rule that established 44 CFR 206.210 was a rule of agency organization, procedure, or practice, and was promulgated without notice and comment rulemaking. This removal of that rule is also a rule of agency organization, procedure, or practice. Removing these regulations is consistent with FEMA's current statutory authority and does not affect the substantive rights or interests of the public.

The APA also provides an exception from notice and comment procedures when an agency finds for good cause that those procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). FEMA finds good cause to issue this rule without prior notice or comment, as such procedures are unnecessary. The removal of these regulations would have no substantive effect on the public because the statutory authority for the DRPP has sunset.

The APA generally requires that substantive rules incorporate a 30-day delayed effective date. 5 U.S.C. 553(d). This rule, however, is merely procedural and does not impose substantive requirements; thus, FEMA finds that a delayed effective date is unnecessary.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

SRIA included a sunset provision of December 31, 2015 for the DRPP. Accordingly, the program is discontinued and there are no costs or cost savings associated with removing the regulations regarding the DRPP. This rule's benefits include a more streamlined CFR that reflects current program options.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 858–9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of regulations on small entities. The RFA applies only when an agency is ''required by section 553 . . . to publish general notice of proposed rulemaking for any proposed rule.'' 5 U.S.C. 603(a). An RFA analysis is not required for this rulemaking because FEMA is not required to publish a notice of proposed rulemaking.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking will not result in the expenditure by State, local, and tribal governments, in the aggregate, nor by the private sector, of $100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), FEMA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Due to this final rule, FEMA will remove FEMA Form 055–0–0–1, Request for Arbitration and Recommendation resulting from Dispute Resolution Pilot Program from information collection, OMB Control Number 1660–0017, Public Assistance Program. Since the program is discontinued, the form is no longer required, and FEMA is removing the associated hour burden estimates which equal 60 hours. Thus, the total hour burden for this collection is being reduced from 425,736 to 425,676.

Collection of Information

Title: Public Assistance Program.
OMB Number: 1660–0017.

FEMA Forms: FEMA Form 009–0–49 Request for Public Assistance; FEMA Form 009–0–91 Project Worksheet (PW); FEMA Form 009–0–91A Project Worksheet (PW)—Damage Description and Scope of Work Continuation Sheet; FEMA Form 009–0–91B Project Worksheet (PW)—Cost Estimate Continuation Sheet; FEMA Form 009–0–91C Project Worksheet (PW)—Maps and Sketches Sheet; FEMA Form 009–0–91D Project Worksheet (PW)—Photo Sheet; FEMA Form 009–0–120 Special Considerations Questions; FEMA Form 009–0–121 PNP Facility Questionnaire; FEMA Form 009–0–123 Force Account Labor Summary Record; FEMA Form 009–0–124 Materials Summary Record; FEMA Form 009–0–125 Rented Equipment Summary Record; FEMA Form 009–0–126 Contract Work Summary Record; FEMA Form 009–0–127 Force Account Equipment Summary Record; FEMA Form 009–0–128 Applicant's Benefits Calculation Worksheet; and FEMA Form 009–0–111, Quarterly Progress Reports.

Abstract: The information collected is utilized by FEMA to make determinations for Public Assistance grants based on the information supplied by the respondents.

Affected Public: State, Local or Tribal government.

Estimated Number of Respondents: 1012.

Estimated Number of Responses: 398,068.

Estimated Total Annual Burden Hours: 425,676.

Estimated Total Annual Respondent Cost: The estimated annual cost to respondents for the hour burden is $26,306,779.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $805,311.96.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

FEMA is removing the DRPP regulations, whose legislative authority has sunset. The removal of these regulations will have no substantive effect on the public since the statutory authority for the program has sunset and will not affect the substantive rights or interests of Indian Tribal governments.

Executive Order 13132, Federalism

Executive Order 13132, ''Federalism,'' 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has determined that this rulemaking does 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, and therefore does not have federalism implications as defined by the Executive Order.

National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.,* an agency must prepare an environmental assessment or environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a–f). This rule meets Categorical Exclusion A3(a), which covers rules of a strictly administrative or procedural nature.

Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA has sent this final rule to the Congress and to GAO pursuant to the CRA. The rule is not a ''major rule'' within the meaning of the CRA. It will not have an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206 as set forth below:

PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 is revised to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1.

§ 206.210 [Removed and Reserved]

■ 2. Remove § 206.210.

Dated: August 23, 2018.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–18796 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–11–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90, WT Docket No. 10–208; FCC 18–124]

Connect America Fund Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final action; extension of filing period; petitions for reconsideration.

SUMMARY: This document addresses two applications for review regarding the procedures and parameters of the Mobility Fund II challenge process and grant in part and deny in part a related extension request.

DATES: This Order is effective August 30, 2018. The window for filing challenges to ineligible areas extended to November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, Audra Hale-Maddox, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the final actions in the Federal Communications Commission (''Commission'') Order, Notice of Proposed Rulemaking and Memorandum Opinion and Order (Combined Order), FCC 18–124, adopted on August 14, 2018, and released on August 21, 2018. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's website at *http://wireless.fcc.gov,* or by using the search function on the ECFS web page at *http://www.fcc.gov/cgb/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. Synposis

On August 21, 2018, the Commission released an ''Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order'' (August 21 Order). The Commission separately published the proposed modifications to the speed test data specifications regarding the relevant timeframes for valid speed tests for the August 21 Order elsewhere in this issue of the **Federal Register**. In the August 21 Order, the Commission extended the previously announced deadline for the close of the Mobility Fund Phase II (MF–II) challenge window by an additional 90 days. Challengers were given until November 26, 2018, to submit speed test data in support of a challenge. The Commission adopted this extension to ensure that interested parties can initiate and submit speed test data for areas they wish to challenge. In addition, given this extension, the Commission proposed to make modifications to the speed test data specifications regarding the relevant timeframes for valid speed tests. The Commission also addressed two applications for review regarding the procedures and parameters of the MF–II challenge process and granted in part and denied in part a related extension request.

II. Order Extending the Challenge Window

1. In February 2017, the Commission adopted rules to move forward on a reverse auction that will direct up to $4.53 billion of MF–II support over ten years to providers in geographic areas lacking unsubsidized 4G Long Term Evolution (LTE) services. The Commission also determined that it would compile a list of areas that were presumptively eligible for MF–II support and provide a limited timeframe before the auction during which interested parties could challenge areas that were not listed as presumptively eligible (*i.e.,* ''presumptively ineligible'' areas). In February 2018, the Rural Broadband Auctions Task Force, in conjunction with the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the Bureaus), published a map of areas presumptively eligible for MF–II support based on a one-time collection by the Commission of 4G LTE coverage data and subsidy data from the Universal Service Administrative Company (USAC).

2. The *MF–II Challenge Process Order,* 82 FR 42473, September 8, 2017, established the framework for a robust challenge process that will refine the map of areas presumptively eligible to receive MF–II support. This challenge process is designed to efficiently resolve disputes about areas that are presumptively ineligible through the submission, analysis, and validation of mobile network speed test data. The Commission initially established a 150-day challenge window for interested parties to contest the initial determination of areas deemed presumptively ineligible for MF–II support. The challenge window opened on March 29, 2018, and it was scheduled to close on August 27, 2018.

3. As part of the challenge process framework, the Commission established various parameters for the acceptance of speed test data, including that such data would only be accepted if they were collected within six months of the scheduled close of the challenge window. That six-month period commenced on February 27, 2018. After the close of the challenge window, a respondent (*i.e.,* a ''challenged party'') will have the opportunity to respond to challenges by submitting its own speed test data or certain technical information that is probative of the validity of the challenger's speed tests. Speed test data submitted by respondents is subject to the same standards and requirements applicable to challengers, except that the Commission established in the *MF–II Challenge Process Order* that it would only accept data submitted by a respondent that was collected within six months of the scheduled close of the response window.

4. After the Commission adopted the timeframe for the challenge window, the Rural Wireless Association (RWA) submitted data regarding estimated burdens of the challenge process, including specific estimates of the amount of time required to conduct speed tests in certain areas.

5. The Commission extended the previously established deadline for challengers to submit data in the challenge process and provide an additional 90 days, until November 26, 2018, for the submission and certification of challenges. The Commission direct USAC to implement this change in the challenge portal.

6. In light of new estimates and again out of an abundance of caution, the Commission concluded that while a 150-day challenge window may still be sufficient for parties to conduct speed tests and submit challenges, providing an additional 90 days for this window will ensure that all interested parties have ample opportunity to conduct speed tests and submit speed test data for the areas they wish to challenge. Providing this additional time, for a total challenge window of 240 days, ultimately should result in a more efficient allocation of support funds, while still advancing the overall auction process to a timely conclusion, directing its limited funds to the unserved areas most in need, and completing the phase down of duplicative support that directs subsidies to areas already served by unsubsidized providers. Accordingly, the Commission makes a procedural change to the challenge process by extending the deadline for filing challenges to November 26, 2018.

III. Memorandum Opinion and Order Addressing Applications for Review From RWA and Verizon

7. In the *MF–II Challenge Process Procedures Public Notice,* 83 FR 13417, March 29, 2018, the Bureaus determined, consistent with the Commission's decision in the *MF–II Challenge Process Order,* that speed test measurements submitted to support or respond to a challenge to an area that initially is deemed ineligible for MF–II support must be no more than one-half of one kilometer apart from one another. The Bureaus also decided to assess challenges using a uniform grid with cells of one square kilometer and a ''buffer'' with a radius equal to one-half of the maximum distance parameter, *i.e.,* one-quarter of one kilometer (250 meters).

8. On March 21, 2018, RWA submitted data regarding the burden a challenger would experience as a result of these decisions. On March 29, 2018, RWA filed an application for review in which it argued that the speed test buffer radius size should have been set at one-quarter mile and that the size of the uniform grid cells should have been one square mile. One party—Verizon—opposed RWA's application for review and argued that the grid cell size and the buffer radius should not be increased.

9. On April 30, 2018, RWA filed an *ex parte* letter indicating that increasing the speed test buffer to 400 meters (approximately one-quarter mile) and maintaining a grid cell size of one square kilometer would yield largely similar results to increasing the grid cell size to one square mile and the buffer size to one-quarter mile. On April 30, 2018, the Bureaus, on their own motion, adopted an order on reconsideration that increased the buffer size to 400 meters. AT&T, the Competitive Carriers Association (CCA), and U.S. Cellular filed replies to Verizon's opposition to RWA's AFR, in which they supported the Bureaus' decision to implement a 400-meter buffer radius. On the issue of the grid cell size, AT&T argued that the grid cells should not be resized. CCA and U.S. Cellular argued that the grid cells should be resized.

10. On June 21, 2018, Verizon filed an application for review of the Bureaus' order on reconsideration in which it sought reinstatement of the 250-meter buffer radius. NTCA, Smith Bagley, RWA, and Panhandle Telecommunication opposed Verizon's application for review and argued that the 400-meter buffer should be maintained. CCA filed a reply to the oppositions supporting the 400-meter buffer radius, and Verizon filed a reply to the oppositions restating its support for a 250-meter buffer radius.

11. RWA's application for review seeks review of the Bureaus' procedures adopted in the *MF–II Challenge Process Procedures Public Notice* establishing a one kilometer grid cell size and a one-quarter kilometer ''buffer'' for assessing challenges to areas deemed ineligible for MF–II support. RWA advocates instead for a one square mile grid size and a one-quarter mile buffer. It argues that roads in certain areas of rural America have been laid out on square mile grids rather than square kilometer grids, which according to RWA means that using a square kilometer grid would yield more grid cells that cannot be fully tested by drive testing. RWA argues further that a 250-meter buffer for each test point would require needlessly dense testing points which would increase the cost and technical difficulty of submitting challenges.

12. RWA's subsequent *ex parte* on April 30, 2018, included additional information. In Alabama and the Oklahoma Panhandle, RWA found that increasing the buffer to 400 meters, while maintaining the one square kilometer grid cell size, would result in a significant reduction of the percentage of cells for which a challenger could not fully test by drive testing. Indeed, RWA found that changing the buffer size would provide better results in Alabama than if both the buffer and grid cell size were increased. In the area in Alabama that RWA studied, the number of grid cells requiring some off-road testing dropped by 26 percentage points when increasing the buffer to 400 meters, versus a decrease of 16 percentage points when increasing buffer size to 400 meters and increasing the grid cell size to one square mile.

13. In the Oklahoma Panhandle, RWA found that the results were largely the same if the buffer size was increased, regardless of whether the grid cell size was also increased. In both cases, RWA found that the grid cells requiring some off-road testing would decrease by nearly 40 percentage points, from 82.3 percent to either 44.7 percent (buffer size alone) or 43.6 percent (buffer and grid cell size). Summarizing its analysis, RWA stated that it ''recognizes the Bureaus' desire to utilize a square kilometer grid cell scheme and believes that the use of a one square kilometer grid cell and accompanying longer buffer radius will give prospective challengers the ability to more meaningfully participate in the MF–II challenge process.''

14. U.S. Cellular supports RWA's AFR. The company estimated that the one-kilometer grid cell size in conjunction with the original 250-meter buffer radius size would make mounting a challenge by drive-testing alone impossible for as much as 78 percent of the areas involved.

15. After considering the data RWA filed in its March 21, 2018 *ex parte* submission, the Bureaus decided to expand the buffer surrounding each test point from 250 meters to 400 meters (approximately equivalent to one-quarter mile), explaining that the new data persuaded them that the previous buffer size and resulting number of test points required may be unduly burdensome to some challengers. The new evidence illustrated both the considerable increase in area that could be covered by drive-testing and the decrease in the number of speed test measurements typically needed per grid cell resulting from using a buffer radius of one-quarter of one mile rather than a radius of one-quarter of one kilometer. These modified parameters decreased the burden on challengers by reducing the number of speed test measurements needed to file a successful challenge. Accordingly, because the Bureaus have already effectively granted RWA's request regarding buffer size, the Commission dismiss RWA's application for review on these grounds as moot.

16. In contrast, RWA has not shown that changing the grid cell size is warranted. The Commission finds that the expansion of the speed test point buffer to 400 meters (as supported by numerous commenters) while retaining the square kilometer grid cell size properly balances the measurements needed for meaningful testing with the burdens placed on challengers and

challenged parties. This decision also furthers the Commission's goals of moving expeditiously to conduct the MF–II auction and of administrative efficiency. The Commission and the Bureaus have carefully considered the burdens on entities that choose to submit challenges and entities that choose to respond to challenges, the goals of administrative efficiency, and the record evidence.

17. As Verizon and AT&T noted, to implement RWA's proposed resizing of the grid, ''the Commission would have to reprocess the carrier coverage maps using a one square mile grid, generate a new map of presumptively eligible areas, and finally direct USAC to modify its challenge process software to accept challenges based on one square mile grid cells.'' AT&T argues that RWA's proposed reconfiguration of the grid cells ''would be too disruptive'' and would ''significantly delay the start'' of the MF–II auction. Similarly, Verizon argues that ''stopping the current challenge process and then starting over with a one square mile grid would extend the challenge process—and delay the start of the Mobility Fund auction—by many months.''

18. Moreover, as AT&T notes, the benefit sought by RWA—an increase in the percentage of the area that can be drive tested—''can effectively be addressed by modifying the buffer radius, as the Bureaus recently did, on their own motion.'' As RWA admits in its various submissions, the buffer size is the key parameter affecting the percentage of cells that can be drive tested and the change made to the buffer size, by itself, would provide similar results—in terms of the increase in the percentage of cells that could be challenged by drive testing—to changing both the buffer size and the grid cell size.

19. RWA, CCA, and U.S. Cellular argue that the one square kilometer grid cell size prevents challenges in less accessible areas. The Commission disagrees. Nothing in the challenge process framework prevents challenges in less accessible areas or in areas that require some off-road testing. As shown in RWA's own submissions, the buffer radius is the key parameter affecting the percentage of area that can be fully tested by drive testing, and increasing the grid cell size in some areas increases the percentage of cells that require off road testing in certain areas. Indeed, U.S. Cellular concedes that the Bureau's increase of the buffer radius to 400 meters undermines its argument that it cannot use drive testing for much of the MF–II challenge process.

20. The Commission appropriately balanced the competing interests of challengers and challenged parties in this proceeding with the need to efficiently administer the challenge process. Roads do not match perfectly with any uniform grid, regardless of the size of the grid cell. The Commission decided to conduct an auction based upon land area, not road miles, because of limited universal service funds on the unserved areas where people live, work, and travel. No commenter sought reconsideration of that decision. Similarly, the Commission decided to not make special accommodations for less accessible areas, and no commenter sought reconsideration of that decision. Any ineligible area may be challenged, and it is incumbent upon challengers and challenged parties to collect the required speed test points to substantiate or rebut a challenge. Indeed, as of July 31, 2018, challengers had already uploaded over 1.6 million speed tests, with a significant number of those tests taken in primarily rural areas. Accordingly, the Commission denies RWA's application for review on the grid cell size.

21. RWA submitted an extension request along with its application for review, requesting that the challenge window be open for 150 days after its application for review was addressed. The Commission granted a 90-day extension of the challenge window, which will extend the challenge window through November 26, 2018. This extension will mean that the challenge window now provides 200 days after the *Order on Reconsideration* for submitting challenges under parameters that largely address RWA's concerns regarding the percentage of areas that could be fully tested by drive testing. The Commission thus has already effectively granted RWA's extension request insofar as it sought at least 150 days for the challenge window after the modifications to the challenge process that it sought were implemented.

22. RWA has not demonstrated that a further extension of the window for filing challenges to areas deemed ineligible for MF–II support is in the public interest. The window has been extended to now provide a window of 200 days with parameters that largely address RWA's concerns, thus providing 50 more days than RWA requested. Although parties may disagree with the specific rules promulgated to achieve the purposes of MF–II, the mere filing of an application for review does not alter the effective date of those rules; a party is not entitled to an extension of the challenge window on the hope that the Commission will act favorably on its application for review. Moreover, the Bureaus have already acted to make it easier to conduct speed tests. Thus, all affected parties must comply with the rules and the requirements of the challenge process, should they choose to participate in it, absent Commission grant of a stay (which RWA did not request). RWA has not cited any unanticipated circumstances that might explain its members' need for an extension nor provided a reasonable justification for granting it.

23. Moreover, granting a further extension as requested by RWA would work at cross-purposes with the goals of the MF–II proceeding. In the *MF–II Report and Order,* 82 FR 15422, March 28, 2017, the Commission stated that the purpose of MF–II is ''to allocate up to $4.53 billion . . . to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist.'' The Commission also indicated that MF–II would redirect legacy subsidies away from areas that are fully covered by unsubsidized 4G LTE service. Further extension of the challenge window undermines the purpose of the MF–II proceeding by delaying the conclusion of the challenge process, the release of the final eligible areas map, the commencement of the MF–II auction, and the refocusing of its limited universal service funds to the primarily rural areas of the country that need the funds the most. Under these circumstances, the Commission finds that the now extended window will provide eligible parties with sufficient time to prepare and submit any challenges they intend to file and that RWA has failed to demonstrate that a further extension of the challenge window would serve the public interest.

24. Accordingly, RWA's extension request is granted in part and is otherwise denied.

25. Verizon's application for review requests that the Commission vacate the Bureaus' decision to increase the maximum speed test distance parameter from 500 meters to 800 meters and the associated speed test buffer radius from 250 meters to 400 meters. The thrust of Verizon's application for review is that the Bureaus have shifted the balance of the MF–II challenge process too far in favor of challengers. The outcome, Verizon argues, will be to ''allow challengers to successfully challenge a one square kilometer area with as few as two speed test points'' and will ''result in widespread false positives, *i.e.,* presumptively successful challenges of large areas that are in fact well-served

by 4G LTE, particularly if providers cherry-pick test points with an aim of minimizing actual coverage.'' Several carriers and trade associations filed oppositions to Verizon's arguments; no filers supported the Verizon AFR. The Commission rejects Verizon's arguments, agrees with the unanimous opposition to Verizon's AFR, and affirms the decision of the Bureaus to expand the maximum distance between speed tests to 800 meters and the buffer radius of speed tests to 400 meters.

26. Verizon argues that the increased speed test buffer radius allows challengers to ''cherry-pick'' speed test data to challenge the unsubsidized providers' coverage maps. The Commission disagrees. The Bureaus did not modify the other numerous and rigorous challenge process requirements in the *MF–II Challenge Process Procedures Public Notice*. Challengers must submit not only speed test data demonstrating throughput below 5 Mbps, but also data collected demonstrating speeds equal to or greater than 5 Mbps. Thus, in grid cells well served by existing 4G LTE, the data submitted to the challenge portal are likely to reflect speed test results favoring incumbents. Moreover, contrary to Verizon's argument, providing only two speed tests in a grid cell with high quality 4G LTE service will likely not be sufficient to successfully challenge the grid cell. Rather, the combined buffer areas of sub-5 Mbps speed tests in or adjacent to challengeable grid cells must cover 75 percent of the challengeable areas of all carriers in the grid cell. Further, even where combined testing points do cover 75 percent of the challengeable areas in a grid cell, the resulting presumptive challenge simply shifts the burden of production (though not the burden of persuasion) to the challenged carrier to produce evidence rebutting the presumption. A presumptive challenge does not automatically result in any change to eligibility; final adjudications of eligibility will occur after challenged parties have an opportunity to respond to challenges.

27. Verizon also argues that increasing the speed test buffer radius to 400 meters will increase the number of presumptively successful challenges in areas already served by 4G LTE—which Verizon terms ''false positives''—which will degrade the accuracy of the MF–II eligibility map. The Commission disagrees. The risk of so-called ''false positives'' from a 400-meter buffer is adequately addressed by the challenge process framework that the Commission adopted. While increasing the buffer radius to 400 meters can make challenges more feasible in areas where roads are less dense, it does not lead to the conclusion that more challenges will cause the accuracy of the final auction eligibility map to suffer. Verizon's argument appears to conflate a presumptive challenge with the final disposition of a challenge. Challenged carriers will have an opportunity to provide evidence refuting a challenge in any challenged grid cell. And because speed test points submitted by challenged parties are buffered by the same distance as points submitted by challengers, increasing the buffer radius increases the ability of challenged carriers to respond to challenges.

28. The Bureaus' increase in the number of grid cells that may be fully tested by drive testing does not alter the network performance that is being tested, nor will it necessarily result in an increase in the number of valid challenges. Indeed, as several entities have noted, more opportunities for challengers to participate in the challenge process should improve the accuracy of the final eligibility map, insofar as it subjects more grid cells to confirmation testing. The Commission likewise agree with NTCA and SBI that the potential risks associated with increasing the buffer size for the challenge process to 400 meters—*i.e.,* increased availability of challenges—are outweighed by the benefits of ensuring, through a process that does not unduly deter challenges, that all areas that lack unsubsidized 4G LTE mobile service are designated eligible for the auction and have an opportunity to compete for MF–II support.

29. The Commission also rejected Verizon's argument that the Bureaus exceeded their authority by increasing the maximum speed test distance parameter and buffer radius. In the *MF–II Challenge Process Order,* the Commission directed the Bureaus to establish the challenge process speed testing parameters. Specifically, the Commission directed Bureaus to establish a maximum distance between tests of up to one mile and to set a corresponding buffer around tests to balance the benefits to the MF–II process, the burdens on small carriers, and an administratively efficient adjudication of challenges regarding network deployment. The Bureaus could consider any maximum speed test distance parameter and buffer within the established one mile range, including the 800-meter distance parameter (approximately one-half of one mile) and corresponding 400-meter buffer radius selected. Thus, the Bureaus were well within their authority to consider newly available record evidence that supported their reconsideration of the maximum speed test distance and buffer radius. In any event, this argument is moot since the Commission has reviewed and upheld the Bureaus' decision.

30. Although Verizon argues that customer experience is likely to vary over those distances due to signal attenuation, and terrain and clutter variations, the Commission notes that the *MF–II Challenge Process Order* did not call for speed tests that mirror every customer experience within a speed tested area, but rather a reasonable balance of administrative and private burdens and costs in a tested area. The 800-meter distance parameter and 400-meter buffer radius reflect such a balance. The parameters selected by the Bureaus also has received widespread support from other parties participating in this proceeding. All four of the parties opposing Verizon's AFR, as well as a reply to the oppositions, supported expanding the buffer radius and maximum speed test distance. Similarly, in filings submitted in response to RWA's AFR, AT&T, CCA, and U.S. Cellular all supported expanding the buffer radius. The Commission further note that, while Verizon objects to the Bureaus' reliance on RWA's evidence, it did not cite any other record evidence, new or otherwise, that undermines the Bureaus' decision.

31. For all these reasons, the Commission denies Verizon's application for review.

IV. Ordering Clauses

32. Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i) and (j), 254, 303(r), and 332 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), (j), 254, 303(r), 332, 1302, and sections 1.1, 1.115, 1.412, and 1.427 of the Commission's rules, 47 CFR 1.1, 1.115, 1.412, 1.427, this Order and Memorandum Opinion and Order *is adopted*.

33. *It is further ordered* that, pursuant to the authority contained in sections 1, 4(i) and (j), 254, 303(r), and 332 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), (j), 254, 303(r), 332, 1302, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR 1.1, 1.412, the deadline for challengers to submit information in connection with the MF–II challenge process *is extended,* to the extent described herein.

34. *It is further ordered* that, pursuant to authority contained in sections 4(i),

254, 303(r), and 332 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 154(i), 254, 303(r), 332, 1302, and section 1.46 of the Commission's rules, 47 CFR 1.46, RWA's Request for Extension of Challenge Window *is granted in part,* and *is denied in part,* to the extent described herein.

35. *It is further ordered* that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR 1.115(g), the Application for Review filed by the Rural Wireless Association, Inc. on March 29, 2018, *is granted in part, dismissed as moot in part*, and *denied in part* to the extent described herein.

36. *It is further ordered* that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR 1.115(g), the Application for Review filed by Verizon Communications, Inc. on June 22, 2018, is *denied*.

37. *It is further ordered* that, pursuant to § 1.427(b) of the Commission's rules, 47 CFR 1.427(b), this Order *shall be effective* upon its publication in the **Federal Register**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–18804 Filed 8–28–18; 11:15 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180209155–8750–03]

RIN 0648–BH77

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Limits in Purse Seine and Longline Fisheries, Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries, and Transshipment Prohibitions

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

ACTION: Final rule; date of effectiveness for collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of a collection-of-information requirement, which was contained in regulations implementing fishing limits in purse seine and longline fisheries, and other restrictions, for U.S. vessels used to fish for highly migratory species in the western and central Pacific Ocean (WCPO), in a final rule published on July 18, 2018. The intent of this final rule is to inform the public of the effectiveness of the collection-of-information requirement associated with daily purse seine fishing effort reports included in the final rule.

DATES: This final rule is effective August 30, 2018. The amendment to 50 CFR 300.218(g), published at 83 FR 33851 (July 18, 2018), is effective on August 30, 2018.

ADDRESSES: Written comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818 and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Emily Crigler, NMFS, (808) 725–5036, or *emily.crigler@noaa.gov.*

SUPPLEMENTARY INFORMATION: Under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act; 16 U.S.C. 6901 *et seq.*), NMFS implemented recent decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

Background

NMFS issued a final rule to implement specific fishing limits in purse seine and longline fisheries, and other restrictions, for U.S. vessels used to fish for highly migratory species in the WCPO. The final rule was published in the **Federal Register** on July 18, 2018 (83 FR 33851) and the associated regulations are found at 50 CFR part 300. The requirements of that final rule, other than the collection-of-information requirements associated with the daily purse seine fishing effort reports, were effective on July 18, 2018. OMB approved the collection-of-information requirements contained in the final rule on August 3, 2018, under OMB Control Number 0648–0649. Accordingly, this final rule announces the approval and effective date of the daily purse seine fishing effort report requirements found at 50 CFR 300.218(g).

Classification

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity for public comment for this action because notice and comment would be unnecessary and contrary to the public interest. This action simply provides notice of OMB's approval of the reporting requirements at issue, which has already occurred, and renders those requirements effective. Thus this action does not involve any further exercise of agency discretion by NMFS or OMB. Moreover, the public has had prior notice and the opportunity to comment on the collection-of-information requirement. NMFS published a proposed rule including the collection-of-information requirement (83 FR 21748; published May 10, 2018), with comments accepted until May 25, 2018. The final rule (83 FR 33851; published July 18, 2018), included a response to the one comment received on the reporting requirements, advised where to send any additional comments on aspects of the collection of information, and indicated that this final rule would be published announcing the effective date for the revised reporting requirements upon OMB approval.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the collection-of-information requirement. The reporting requirements included in this final rule are intended to allow NMFS to obtain better data, to more accurately track the purse seine fishing effort limits, specified at 50 CFR 300.223(a), and to predict when a fishing effort limit is expected to be reached with greater certainty. Delaying the effective date of this reporting requirement will limit NMFS's ability to accurately track fishing effort and make timely predictions of when effort limits may be reached. Accordingly, waiver of the 30-day delay in effective date is necessary to comply with the requirements of the WCPFC Implementation Act, the failure of which would be contrary to the public interest.

Executive Order 12866

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

Paperwork Reduction Act

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which OMB approved under OMB Control Number 0648–0649 on August 3, 2018. Specifically, U.S. purse seine

vessels owners and operators may be required, when directed by NMFS, to provide daily reports on the fishing activity of the vessel (*e.g.,* setting, transiting, searching), location, and type of set. This requirement is similar to a previous collection-of-information requirement which required U.S. purse seine owners and operators, when directed by NMFS, to provide daily reports on the number of sets made on fish aggregating devices (FADs) during that day. The public reporting burden for the daily report of purse seine effort information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submissions@omb.eop.gov,* or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: August 24, 2018.

Samuel D. Rauch III,

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

[FR Doc. 2018–18774 Filed 8–29–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 169
Thursday, August 30, 2018

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2018–0185]

Use of Electronic Signatures by Medical Licensees on Internal Documents

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on a draft regulatory issue summary (RIS). The draft RIS describes one means by which medical licensees can use electronic signatures to satisfy NRC's signature requirements on internal records that the NRC requires the licensee to maintain. The draft RIS is addressed to medical licensees, NRC master materials licensees, Agreement State Radiation Control Program Directors, and State Liaison Officers. The NRC provides this RIS to the Agreement States for their information and for distribution to their licensees, as they deem appropriate.

DATES: Submit comments by October 29, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0185. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: Maryann Ayoade, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone 301–415–0862, email: *Maryann.Ayoade@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0185 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 *http://www.regulations.gov* and search for Docket ID NRC–2018–0185.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The NRC Regulatory Issue Summary 2018–XX, ''Use Of Electronic Signatures By Medical Licensees On Internal Documents,'' is available in ADAMS under Accession No. ML16349A179.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0185 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 *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Background

The NRC issues RISs to communicate with stakeholders on a broad range of matters. These matters may include communicating and clarifying NRC technical or policy positions on regulatory matters that have not been communicated to or are not broadly understood by the nuclear industry. The draft RIS describes one means by which medical licensees can use electronic signatures to satisfy NRC's signature requirements on internal records that the NRC requires the licensee to maintain.

As noted in 83 FR 20858 (May 8, 2018), this document is being published in the Proposed Rules section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

Proposed Action

The NRC is requesting public comments on the draft RIS. The NRC staff will make a final determination regarding issuance of the RIS after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 27th day of August 2018.

For the Nuclear Regulatory Commission.

Brian J. Benney,

Senior Project Manager, ROP and Generic Communications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–18816 Filed 8–29–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0194; Airspace Docket No. 18–AGL–6]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Madison, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Lac Qui Parle County Airport (formerly Madison-Lac Qui Parle Airport), Madison, MN, to accommodate new standard instrument approach procedures for instrument flight rules (IFR) operations at this airport due to the decommissioning of the Madison non-directional radio beacon (NDB) and cancellation of the associated approach.. This action would enhance the safety and management of IFR operations at this airport. An editorial change also would be made to the airspace designation removing the city from the airport name.

DATES: Comments must be received on or before October 15, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2018–0194; Airspace Docket No. 18–AGL–6, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11B Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Walter Tweedy, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2018–0194; Airspace Docket No. 18–AGL–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius (increased from a 6.3-mile radius) at Lac Qui Parle County Airport, Madison, MN. The segment 7.4 miles southeast of the airport would be removed due to the decommissioning of the Madison NDB and cancellation of the associated approach. This action would enhance the safety and management of the standard instrument approach procedures for IFR operations at the airport.

Also, an editorial change would be made removing the city from the airport name in the airspace designation to comply with a change to FAA Order 7400.2L, Procedures for Handling Airspace Matters.

Additionally, the airport name would be updated from Madison-Lac Qui Parle Airport, to Lac Qui Parle County Airport, Madison, MN.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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, is non-controversial and unlikely to result in adverse or negative comments. 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 rule, when promulgated, would 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

Accordingly, pursuant to the authority delegated to me, 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 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

* * * * *

AGL MN E5 Madison, MN [Amended]

Lac Qui Parle County Airport, MN
(Lat. 44°59′11″ N, long. 96°10′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Lac Qui Parle County Airport, MN.

Issued in Fort Worth, Texas, on August 22, 2018.

Walter Tweedy

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

[FR Doc. 2018–18763 Filed 8–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0683; Airspace Docket No. 18–AGL–17]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Lapeer, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Dupont-Lapeer Airport, Lapeer, MI. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Pontiac VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. Airspace redesign would enhance the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before October 15, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2018–0683; Airspace Docket No. 18–AGL–17, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 700 feet above the surface at Dupont-Lapeer Airport, Lapeer, MI, to

support instrument flight rules operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2018–0683; Airspace Docket No. 18–AGL–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius (decreased from a 6.5-mile radius) at Dupont-Lapeer Airport, Lapeer, MI; and amending the extension to the north to extend from the 6.4-mile radius (decreased from the 6.5-mile radius) to 11.0 miles (increased from 10.9 miles) north of the airport.

This action is necessary due to an airspace review caused by the decommissioning of the Pontiac VOR, which provided navigation information to the instrument procedures at this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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, is non-controversial and unlikely to result in adverse or negative comments. 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 rule, when promulgated, would 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

Accordingly, pursuant to the authority delegated to me, 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 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

* * * * *

AGL MI E5 Lapeer, MI [Amended]

Dupont-Lapeer Airport, MI
(Lat. 43°03′59″ N, long. 83°16′18″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Dupont-Lapeer Airport, and within 2.0 miles each side of the 357° bearing from the airport extending from the 6.4-mile radius to 11.0 miles north of the airport.

Issued in Fort Worth, Texas, on August 23, 2018.

Walter Tweedy,

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

[FR Doc. 2018–18768 Filed 8–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0684; Airspace Docket No. 18–AGL–18]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Jacksonville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Jacksonville Municipal Airport, Jacksonville, IL. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Jacksonville VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates for the airport would also be updated to coincide with the FAA's aeronautic database. This action is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before October 15, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2018–0684; Airspace Docket No. 18–AGL–18, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 700 feet above the surface at Jacksonville Municipal Airport, Jacksonville, IL, to support instrument flight rules operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2018–0684; Airspace Docket No. 18–AGL–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (decreased from a 7-mile radius) at Jacksonville Municipal Airport, Jacksonville, IL. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautic database.

This action is necessary due to an airspace review caused by the decommissioning of the Jacksonville VOR, which provided navigation information to the instrument

procedures at this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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, is non-controversial and unlikely to result in adverse or negative comments. 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 rule, when promulgated, would 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

Accordingly, pursuant to the authority delegated to me, 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 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

* * * * *

AGL IL E5 Jacksonville, IL [Amended]

Jacksonville Municipal Airport, IL
(Lat. 39°46′29″ N, long. 90°14′18″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jacksonville Municipal Airport.

Issued in Fort Worth, Texas, on August 23, 2018.

Walter Tweedy,

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

[FR Doc. 2018–18767 Filed 8–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

Roadless Area Conservation; National Forest System Lands in Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture (USDA) is initiating an environmental impact statement (EIS) and public rulemaking process to address the management of inventoried roadless areas on the Tongass National Forest within the State of Alaska. This rulemaking is the result of a petition submitted by Governor Bill Walker's administration in January 2018 on behalf of the State of Alaska, pursuant to the Administrative Procedures Act. The petition was accepted by the Secretary of Agriculture in April 2018. The intent is to evaluate the regulatory exemption set forth in the petition, as well as to evaluate other management solutions that address infrastructure, timber, energy, mining, access, and transportation needs to further Alaska's economic development, while still conserving roadless areas for future generations.

DATES: Comments must be received in writing by October 15, 2018.

ADDRESSES: Comments may be submitted electronically at *https://www.fs.usda.gov/project/?project=54511.* In addition, written comments can be submitted via hard-copy mail to: Alaska Roadless Rule, USDA Forest Service, Alaska Region, Ecosystem Planning and Budget Staff, P.O. Box 21628, Juneau, Alaska 99802–1628.

All comments, including names and addresses, are placed in the record and are available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Ken Tu, Interdisciplinary Team Leader, at 303–275–5156 or *akroadlessrule@fs.fed.us.* Individuals using telecommunication devices for the deaf (TDD) may call the Federal Information Relay Services at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 12, 2001, the Department promulgated the Roadless Area Conservation Rule (2001 Roadless Rule) (66 FR 3244) establishing nationwide prohibitions on timber harvest, road construction and road reconstruction within inventoried roadless areas, with certain limited exceptions.

In 2001, the State of Alaska filed a complaint, challenging the Department's promulgation of the 2001 Roadless Rule and its application in Alaska. The Department and the State of Alaska reached a settlement in 2003, and the Department subsequently issued a rule temporarily exempting the Tongass National Forest from the Roadless Rule. In 2011, a federal court set aside the Tongass Exemption and reinstated the Roadless Rule on the Tongass National Forest. The district court's ruling was initially reversed by a three-judge panel of the Ninth Circuit, but the district court's ruling was ultimately upheld in a 6–5 *en banc* ruling in 2015. Consequently, the 2001 Roadless Rule remains in effect in Alaska and the Forest Service continues to apply the Rule to the Tongass and Chugach National Forests.

Purpose and Need

In response to the State of Alaska's petition for rulemaking, the Department, Forest Service, and State of Alaska agree that the controversy surrounding the management of roadless areas on the Tongass National Forest may be resolved through state-specific rulemaking. A long-term, durable approach to roadless area management is needed that accommodates the unique biological, social and economic situation in and around the Tongass National Forest. The Tongass National Forest is unique from other National Forests in respect to the size of the Tongass National Forest; the large percentage of roadless areas that comprise the Tongass National Forest; the degree of dependency of local

communities on federal lands (the Tongass National Forest comprises almost 80% of southeast Alaska); as well as Alaska and Tongass National Forest-specific statutory considerations (*e.g.,* Alaska National Interest Lands Conservation Act (ANILCA), Tongass Timber Reform Act (TTRA)).

The Department and Forest Service believe that current timber harvest and road construction/reconstruction restrictions can be adjusted for the Tongass National Forest in a manner that meaningfully addresses local economic and development concerns while balancing roadless area conservation needs.

The State of Alaska believes that roadless conservation interests for the Tongass National Forest can be adequately protected under the Tongass Land Management Plan and that the 2001 Roadless Rule prohibitions are unnecessary. In addition, the State believes application of the 2001 Roadless Rule substantially impacts the social and economic fabric of southeast Alaska and violates ANILCA and TTRA.

In response to the State's petition, commercial and non-profit organizations have expressed strong opinions, for and against, the idea of a regulatory review.

Proposed Action

The Department proposes to develop a durable and long-lasting regulation for the conservation and management of roadless areas on the Tongass National Forest. The state-specific roadless rule would establish a land classification system designed to conserve roadless area characteristics on the Tongass National Forest while accommodating timber harvesting and road construction/reconstruction activities that are determined to be needed for forest management, economic development opportunities, and the exercise of valid existing rights or other non-discretionary legal authorities.

Alternatives to the Proposed Action

The other alternatives being considered at this time are the no-action alternative, which is the continuation of current management of the Tongass National Forest in Alaska in accordance with the 2001 Roadless Rule, and an alternative that would exempt the Tongass National Forest from the provisions of that 2001 Roadless Rule, but leave current management under the 2001 Roadless Rule in place on the Chugach National Forest.

Cooperating Agencies

The State of Alaska will participate as a cooperating agency in the preparation of the EIS. Federally recognized Tribes within the Tongass National Forest have been invited to participate as a cooperating agency.

Responsible Official

The Responsible Official for the rulemaking and EIS is the Secretary of Agriculture or his designee.

Decision To Be Made

The Responsible Official will determine appropriate management direction for roadless areas within the State of Alaska, including appropriate exceptions to address essential infrastructure, timber, energy, mining, access, and transportation systems necessary to further Alaska's economic development interests, while at the same time conserving roadless areas in Alaska for generations to come.

Scoping Process

This Notice of Intent initiates the scoping process in compliance with the National Environmental Policy Act and its implementing regulations (40 CFR part 1500–1508). As part of the scoping period, the Forest Service, on behalf of the Department, solicits public comment on the nature and scope of the environmental, social, and economic issues related to Alaska-specific rulemaking that should be analyzed in depth in the Draft EIS.

Comments collected during scoping of the Alaska-specific rulemaking will be used to refine the proposed action, define the scope of the analysis, and develop alternatives to the proposed action if needed. Public meetings are planned to be held in Juneau (September 13, 2018), Ketchikan (September 17, 2018), Hoonah (September 17, 2018), Craig (September 18, 2018), Angoon (September 18, 2018), Point Baker/Port Protection (September 19, 2018), Wrangell (September 24, 2018), Sitka (September 24, 2018), Petersburg (September 25, 2018), Yakutat (September 25, 2018), Kake (September 26, 2018), and Anchorage (September 26, 2018), and Washington DC (date to be determined). Additional information on meeting times and locations will be provided through the project website and local media.

Estimated Timeline

The Draft EIS and proposed rule are estimated to be released in early summer 2019. The Final EIS is estimated to be released in spring 2020, with a final rule expected in June 2020.

Dated: August 24, 2018.

Christopher B. French,

Acting Deputy Chief.

[FR Doc. 2018–18937 Filed 8–29–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 100

RIN 0906–AB14

National Vaccine Injury Compensation Program: Adding the Category of Vaccines Recommended for Pregnant Women to the Vaccine Injury Table

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of public hearing.

SUMMARY: This document announces a public hearing to receive information and comments regarding the notice of proposed rulemaking (NPRM) titled ''National Vaccine Injury Compensation Program: Adding the Category of Vaccines Recommended for Pregnant Women to the Vaccine Injury Table.''

DATE AND TIME: September 17, 2018, from 10:00 a.m. to 11:30 a.m. ET.

Location: 5600 Fishers Lane, Conference Room 08SWH01, Rockville, MD 20857 (and via audio conference call and Adobe Connect).

The public can join the hearing by:

1. (In Person) The hearing will take place at 5600 Fishers Lane, Rockville, MD 20857. Persons interested in attending the hearing in person are encouraged to submit a written notification to: Ana Marie Balingit-Wines, Division of Injury Compensation Programs (DICP), Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 08N146B, 5600 Fishers Lane, Rockville, Maryland 20857 or email: *abalingit-wines@hrsa.gov.* Since this hearing is held in a Federal government building, attendees must go through a security check to enter the building and participate in the meeting. A written notification is encouraged to make entry through security quicker. To request an escort during the hearing, call Ana Marie Balingit-Wines at 301–443–2030.

2. (Audio Portion) Call the conference phone number 855–303–0062 and provide the following information: Leader's Name: Dr. Narayan Nair, Password: 622245.

3. (Visual Portion) Connect to the NPRM-Public Hearing Adobe Connect Pro Meeting using the following URL: *https://hrsa.connectsolutions.com/nprm_public_hearing/* (copy and paste the link into your browser if it does not

work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview.* Call (301) 443–2030 or send an email to *abalingit-wines@hrsa.gov* if you are having trouble connecting to the meeting site.

FOR FURTHER INFORMATION CONTACT: Dr. Narayan Nair, Director, Division of Injury Compensation Programs, at 800–338–2382 or by email: *nnair@hrsa.gov.*

SUPPLEMENTARY INFORMATION: As required by statute, the Secretary proposes to amend the Vaccine Injury Table (Table) by regulation to include vaccines recommended by the CDC for routine administration in pregnant women. The proposed rule, which was published in the **Federal Register** on April 4, 2018 (83 FR 14391; *https://www.gpo.gov/fdsys/pkg/FR-2018-04-04/pdf/2018-06770.pdf*), would amend the existing language in Item XVII of the Table to include ''and/or pregnant women'' after ''children.'' This proposed revision would add to the general category of the Table any new vaccine recommended by the CDC for routine administration in pregnant women after imposition of an excise tax and publication of a notice of coverage. The Secretary is seeking public comment on the proposed revision to the Table. The public comment period for the NPRM closes on October 1, 2018.

A public hearing on the NPRM will take place on September 17, 2018. This hearing is to provide an open forum for the presentation of information and views concerning the proposed revision to the Table by interested persons. In preparing a final regulation, the Secretary will consider the administrative record of this hearing along with all other written comments received during the comment period specified in the NPRM. The presiding officer, representing the Secretary of HHS, will be Dr. Narayan Nair, Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, Health Resources and Services Administration.

Individuals or representatives of interested organizations may participate in the public hearing in accordance with the following schedule and procedures. Persons who wish to participate should file a notice of participation with the Department of Health and Human Services (HHS) on or before September 3, 2018. The notice should be mailed to the Division of Injury Compensation Programs, Room 08N146B, 5600 Fishers Lane, Rockville, Maryland 20857 or emailed to *abalingit-wines@hrsa.gov.* To ensure timely handling, any outer envelope or the subject line of an email should be clearly marked ''VICP NPRM Hearing.'' The notice of participation should contain the interested person's name, address, email address, telephone number, any business or organizational affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. Groups that have similar interests should consolidate their comments as part of one presentation. Time available for the hearing will be allocated among the persons who properly file notices of participation. If time permits, interested parties attending the hearing who did not submit notice of participation in advance will be allowed to make an oral presentation at the conclusion of the hearing.

Persons who find that there is insufficient time to submit the required information in writing may give oral notice of participation by calling Ana Marie Balingit-Wines, Division of Injury Compensation Programs, at (301) 443–2030, no later than September 3, 2018. After reviewing the notices of participation and accompanying information, HHS will schedule each appearance and notify each participant by mail, email, or telephone of the time allotted to the person(s) and the approximate time the person's oral presentation is scheduled to begin.

Written comments and transcripts of the hearing will be made available for public inspection as soon as they have been prepared, on weekdays (except Federal holidays) between the hours of 8:30 a.m. and 5:00 p.m. (EDT) at the Division of Injury Compensation Programs, Room 08N146B, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: August 24, 2018.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2018–18873 Filed 8–29–18; 8:45 am]

BILLING CODE 4165–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90, WT Docket No. 10–208; FCC 18–124]

Connect America Fund; Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes modifying the timeframe for collecting acceptable speed test data in support of Mobility Fund II eligibility challenges, such that acceptable data may be collected at any time on or after February 27, 2018, until November 26, 2018.

DATES: Comments are due September 10, 2018, and reply comments are due by September 14, 2018.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–90 and WT Docket No. 10–208, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov,* phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, Audra Hale-Maddox, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), WC Docket No. 10–90 and WT Docket No. 10–208, FCC 18–124, adopted on August 14, 2018, and released on August 21, 2018. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's website at *http://wireless.fcc.gov,* or by using the search function on the ECFS web page at *http://www.fcc.gov/cgb/ecfs/.*

Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/filings.* Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket numbers WC Docket No. 10–90 and WT Docket No. 10–208.
- *Paper Filers:* Parties who choose to file by paper must file an original and three copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, Annapolis, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Ex Parte Presentations

Pursuant to § 1.1200(a) of the Commission's rules, this NPRM shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Paperwork Reduction Act

The *NPRM* does not contain any new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new, modified, or proposed information collection burden for business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for a notice-and-comment rulemaking proceeding, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, the *2014 CAF FNPRM,* 79 FR 39195, July 9, 2014, and the *MF–II FNPRM,* 82 FR 13413, March 13, 2017, (collectively, *MF–II FNPRMs*). The Commission sought written public comment on the proposals in the *MF–II FNPRMs* and comments on the IRFAs and Supplemental IRFA. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the *CAF Report & Order and Further Notice,* 79 FR 39163, July 9, 2014, the *MF–II Report & Order,* 82 FR 15422, March 28, 2017, the *MF–II Challenge Process Order,* 82 FR 42473, September 8, 2017, and the *MF–II Second Order on Reconsideration,* 83 FR 17934, April 25, 2018 (collectively, the *MF–II Orders*). Therefore, the Commission certifies that the requirements of the Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities.

I. Synopsis

On August 21, 2018, the Federal Communications Commission (''Commission'') released an Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 18–124. A summary of the final actions from that document is published elsewhere in this issue of the **Federal Register**. In that document, the Commission extended the previously

announced deadline for the close of the Mobility Fund Phase II (MF–II) challenge window by an additional 90 days until November 26, 2018, during which period challengers may submit speed test data in support of a challenge. The Commission adopted this extension to ensure that interested parties can initiate and submit speed test data for areas they wish to challenge. Given this extension, the Commission proposed to make modifications to the speed test data specifications regarding the relevant timeframes for valid speed tests.

II. Notice of Proposed Rulemaking To Modify the Data Timing Requirements

1. In the *MF–II Challenge Process Order,* the Commission stated that speed test measurements taken before the submission of updated coverage maps might not accurately reflect current network deployment and accordingly adopted a requirement that speed test measurements from challengers must be taken after the publication of the initial eligible areas map and within six months of the scheduled close of the challenge window. Similarly, the Commission stated it would only accept measurements from challenged parties that were collected after the publication of the initial eligibility map and within six months of the scheduled close of the response window.

2. To ensure that the extension of the challenge filing deadline does not inadvertently create hardships for those challengers that have already conducted speed tests, and to provide similar testing parameters for both the challengers and the challenged parties, the Commission tentatively concludes that it would be in the public interest to modify the initially-adopted requirements that speed test data be collected within six months of the scheduled close of the relevant challenge or response window. Accordingly, the Commission proposes to accept speed test data in support of challenges collected at any time on or after February 27, 2018, the date of the publication of the map of presumptively eligible areas, through the new close of the challenge window, November 26, 2018. This would provide challengers with an additional three months (for a total of nine months) to conduct speed tests. Consistent with the *MF–II Challenge Process Order's* generally parallel standards for challengers and respondents, the Commission proposes to make a corresponding change to afford respondents at least the same amount of time as challengers to collect data. Accordingly, a respondent would have at least nine months to collect speed test data of their own network, and respondent speed tests collected on or after April 29, 2018, would be considered valid.

3. The Commission tentatively concludes that the extension of the filing deadline warrants a modification of the current data timing requirements for challengers and respondents. The Commission tentatively concludes that modifying these requirements will serve the public interest by preventing challengers from having to repeat speed tests, and it should permit more effective implementation of Commission policy. In contrast, the Commission tentatively concludes that failing to modify this timing requirement would prohibit challengers from using the speed tests conducted between February 27 and May 28 (*i.e.,* tests conducted more than six months before the new November 26 deadline), thereby forcing such challengers to engage in more testing than they would otherwise have had to conduct. Further, the Commission believes that providing respondents (*i.e.,* the ''challenged parties'') with a similar data timing requirement appropriately balances the interests of respondents with the Commission's interest in receiving data collected recently, after the one-time 4G LTE data collection that initiated the challenge process. The Commission seeks comment on its tentative conclusions and these proposed modifications of the timing requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–18806 Filed 8–28–18; 11:15 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 83, No. 169
Thursday, August 30, 2018

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability (NOFA); Market Facilitation Program (MFP) Payments to Producers

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: MFP provides payments to producers with commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. This NOFA announces the availability of MFP funds for eligible producers of the following commodities for 2018: Soybeans, sorghum, wheat, extra long staple (ELS) cotton, upland cotton, corn, hogs, and milk. On behalf of the Commodity Credit Corporation (CCC), the Farm Service Agency (FSA) will administer MFP. MFP participants will receive an MFP payment, calculated based on the eligible production multiplied by the participant's share multiplied by the MFP payment rate.

DATES:

Application period: September 4, 2018, through January 15, 2019.

Comment Dates: We will consider comments on the Paperwork Reduction Act that we receive by: October 29, 2018.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Acting Deputy Administrator for Farm Programs, telephone: (202) 720–3175.

SUPPLEMENTARY INFORMATION:

Background

CCC published 7 CFR part 1409 in the Rules and Regulations section of this issue of the **Federal Register** specifying the eligibility requirements, payment calculations, and application procedures for MFP. MFP provides assistance to producers with commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. This NOFA announces the availability of initial MFP payments for 2018 for soybeans, sorghum, wheat, ELS cotton, upland cotton, corn, hogs, and milk.

Application Process

Each eligible producer applies for MFP on an application form. A producer applies for MFP once. Payments will not be issued until a producer certifies production, as described below.

Payment Rates

The MFP payment rates will be as determined by CCC.

The MFP payment rates and units of measure that will be in effect beginning September 4, 2018, are listed in the following table.

Commodity	Unit	Rate ($/unit)
Soybeans	bushels	$1.65
Sorghum	bushels	0.86
Wheat	bushels	0.14
Cotton (Upland and ELS)	pounds	0.06
Corn	bushels	0.01
Hogs	head	8.00
Milk	hundredweight (cwt)	0.12

The units of measure are: bu = number of bushels; lb. = weight in pounds; head = number of head of hogs; and cwt = hundredweight.

The initial payment rate will apply to the first 50 percent of the producer's total production of the selected commodity. On or about December 3, 2018, CCC may announce a second payment rate, if applicable, that will apply to the remaining 50 percent of the producer's production for the selected commodity.

MFP payment at either the initial payment rate or at a second payment rate will be made after a producer harvests 100 percent of the crop and certifies the amount of production.

The actual production used to calculate an MFP payment under this NOFA is for 2018 production in which the applicant had an ownership share. Specifically, required production information is as follows:

- For crops, harvested production for the 2018 crop year;
- For hogs, the number of head of live hogs owned as of August 1, 2018; and
- For milk, the historical production reported for the Margin Protection Program—Dairy (following the same reporting rules as used for MPP—Dairy).

An ownership share for a crop will be as reported to FSA on the acreage report, form FSA–578, ''Report of Acreage.'' With respect to cotton, the ownership share applies only to cotton harvested as lint cotton and with respect to corn, sorghum, and wheat, the ownership share applies only to such commodities that are harvested as grain. The ownership share for milk will be as reported to FSA for MPP—Dairy for the dairy operation that was in business as of June 1, 2018. Dairy operations that are not in business as of June 1, 2018, are ineligible for MFP. Ownership for hogs will be reported to FSA on the MFP application; if a person or legal entity has a contract to grow the hogs, but does not own the hogs as of August 1, 2018, the person or legal entity is ineligible for MFP.

Production Evidence

On the application, the producer will certify the amount of production and note the source of production evidence. If requested, the producer must also provide supporting documentation as determined by CCC for the amount of production.

If supporting documentation is required for the amount of actual

production and for ownership share, it needs to be verifiable records that substantiate the reported amounts. The participant's production for the commodity is based on verifiable or reliable production records. Examples of reliable production records include evidence provided by the participant that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, or contemporaneous diaries that are determined acceptable by the county committee.

Reliable record means any nonverifiable record available that reasonably supports the eligible production, as determined acceptable by the FSA county committee.

Verifiable record means a document provided by the producer that can be verified by the FSA county committee through an independent source and is used to substantiate the eligible production.

Payment Limitation

For MFP payments, there will be a single combined $125,000 per person or legal entity payment limitation for the five crops announced in this NOFA and a separate combined per person or legal entity $125,000 payment limitation for hogs and milk.

Eligible Crops

To be eligible to receive an MFP payment for a crop, the amount of mechanically harvested production for soybeans, sorghum, wheat, ELS cotton, upland cotton, and corn will be the amount based on the crop types, intended uses, and status that are consistent with the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) program regulations in 7 CFR part 1412, except grazing is not an eligible intended use for MFP.

Paperwork Reduction Act Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), FSA is requesting comments from interested individuals and organizations on the information collection activities related to MFP. After the 60-day period ends, the information collection request will be submitted to OMB for the 3-year approval to cover MFP information collection.

To start the MFP information collection approval, FSA received emergency approval from OMB for 6 months. The emergency approval covers this NOFA and any other MFP information collection activities.

Title: Marketing Facilitation Program (MFP).

OMB Control Number: 0560—New.

Type of Request: New Collection.

Abstract: This information collection is required to support all MFP information collection activities (NOFA and the regulation in 7 CFR part 1409) to provide eligible producers payments with respect to commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibilities and assist in producer's payment calculations.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Public reporting burden for this information collection is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 784,439.

Estimated Number of Reponses per Respondent: 1.

Estimated Total Annual Responses: 784,439.

Estimated Average Time per Response: 0.6983 hours.

Estimated Total Annual Burden on Respondents: 863,297.

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Environmental Review

The environmental impacts for MFP have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799).

As stated in the MFP final rule, the implementation of MFP and the participation in MFP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. The final rule served as documentation of the programmatic environmental compliance decision for this federal program; therefore, CCC will not prepare additional environmental compliance documentation for this NOFA.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this NOFA applies is:

10.123 Market Facilitation Program.

Richard Fordyce,

Administrator, Farm Service Agency.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2018–18819 Filed 8–28–18; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program—Disaster Supplemental Nutrition Assistance Program (D–SNAP)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and

other public agencies to comment on the proposed information collection. This is a revision of a currently approved collection associated with requests by State agencies to operate a Disaster Supplemental Nutrition Assistance Program (D–SNAP) to temporarily provide food assistance to households following a disaster.

DATES: Written comments must be received on or before October 29, 2018.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Sasha Gersten-Paal, Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 812, Alexandria, VA 22302. Comments may also be faxed to the attention of Ms. Gersten-Paal at (703) 305–2507 or via email to *Sasha.Gersten-Paal@fns.usda.gov*.

Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the FNS during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Room 800, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Gersten-Paal at (703) 305–2507.

SUPPLEMENTARY INFORMATION:

Title: Disaster Supplemental Nutrition Assistance Program (D–SNAP).

OMB Number: 0584–0336.

Expiration Date: 1/31/2019.

Type of Request: Revision of a previously approved collection.

Abstract: Pursuant to § 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5179, and § 5(h)(1) the Food and Nutrition Act of 2008, 7 U.S.C. 2014(h), the Secretary of Agriculture has the authority to establish a Disaster Supplemental Nutrition Assistance Program (D–SNAP), which is a temporary program State agencies may operate to provide food assistance to households affected by disasters. D–SNAP is separate and distinct from the Supplemental Nutrition Assistance Program (SNAP) because it has different standards of eligibility, is operated for a limited duration, and only provides one month's worth of benefits to eligible households.

State agencies must submit formal requests to operate D–SNAP to the Food and Nutrition Service (FNS) for approval, and may only request to operate D–SNAP in areas that have received a Presidential Disaster Declaration with authorization for Individual Assistance, also known as an IA declaration, from the Federal Emergency Management Agency (FEMA). In their D–SNAP requests, State agencies must outline their proposed procedures for conducting D–SNAP, designate the areas where they wish to operate, and provide sufficient supporting information. FNS reviews all D–SNAP requests and supporting information to ensure that all necessary requirements to operate D–SNAP are met. The information collected under this notice is required for State agencies to obtain FNS approval to operate D–SNAP.

The burden associated with the certification of D–SNAP applicants by State agencies is included under currently approved OMB information collection 0584–0064 (SNAP Forms: Applications, Periodic Reporting, Notices; expiration date: 07/31/2020), and the burden associated with the submission of form FNS–292B: Report of Disaster Supplemental Nutrition Assistance Benefit Issuance by State agencies is covered under the currently approved OMB information collection 0584–0037 (Report of D–SNAP Benefit Issuance and Commodity Distribution for Disaster Relief; expiration date: 02/28/2021). Neither of these burden activities will be reflected in this submission.

Because it is impossible to predict the number of natural disasters and extreme weather events that result in an IA declaration in a given year, and because some State agencies may find that operation of a D–SNAP is not warranted even upon receipt of an IA declaration, FNS is revising this burden estimate based on the annual average number of formal D–SNAP requests that were submitted and approved since this collection was last approved. From fiscal year 2015 to 2017, and average of 5 State agencies requested and were approved to operate D–SNAP each year.

Once approved by FNS to operate D–SNAP, State agencies must submit any subsequent request to modify or expand operations to newly eligible areas to FNS for approval. These modification or expansion requests are typically reserved for when a large-scale disaster impacts different areas of a State in different ways or at different times. While these subsequent modification and expansion requests require substantially less time to prepare than initial D–SNAP requests, FNS is revising this burden estimate to account for these is slight increase in total annual burden.

Summary of burden hours:

Affected Public: State agencies and local governments.

Estimated Total Annual Number of Respondents: The total estimated number of respondents is 7. This includes: An average of 5 State agencies that submit D–SNAP requests, and 2 State agencies that submit subsequent requests to modify or expand approved D–SNAPs.

Estimated Frequency of Responses per Respondent: State agencies usually submit 1 D–SNAP request per year, and may occasionally submit 1 subsequent modification or expansion request.

Estimated Total Annual Responses: 7.

Estimated Total Hours per Response: Approximately 10 hours for State agency D–SNAP requests, and approximately 3 hours for each subsequent modification or expansion request.

Estimated Total Annual Burden on Respondents: 56.

Respondent	Estimated number of respondents	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total hours (col. dxe)
State Agency—Submission of D–SNAP Request	5	1	5	10	50
State Agency—Submission of D–SNAP modification or expansion request	2	1	2	3	6
Total reporting burden	7		7		56

Dated: August 21, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2018–18787 Filed 8–29–18; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Minnesota Advisory Committee (Committee) to the Commission will be held at 12 p.m. CDT Thursday August 30, 2018 to discuss civil rights concerns in the State.

DATES: The meeting will be held on Thursday August 30, 2018, at 12 p.m. CDT.

Public Call Information: Dial: 877–260–1479; Conference ID: 8494802.

For More Information Contact: Carolyn Allen at *callen@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the U.S. Commission on Civil Rights, Regional Programs Unit, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may be faxed to the Commission at (312) 353–8324, or emailed Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://facadatabase.gov/committee/meetings.aspx?cid=256.* Please click on the ''Meeting Details'' and ''Documents'' links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Approval of Minutes
III. Discussion:
  a. Op-Ed Draft: Policing in Minnesota
  b. Civil Rights Topics
IV. Public Comment
V. Next Steps
VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of this Committee discussing publication of an op-ed regarding policing, in conjunction with the recent release of their report on the topic.

Dated: August 24, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–18777 Filed 8–29–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

[Docket No. xxxxxxxxx–xxxx–01]

XRIN xxxx–XCxxx

Notice of Establishment of American Workforce Policy Advisory Board; Solicitation of Nominations for Membership on Advisory Board

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice; solicitation of nominations.

SUMMARY: The Department of Commerce announces the establishment of the American Workforce Policy Advisory Board, pursuant to Executive Order 13845, Establishing the President's National Council for the American Worker, (E.O. 13845 or executive order), and in accordance with the Federal Advisory Committee Act (FACA). The Board will provide advice and recommendations to the National Council for the American Worker (Council) on ways to encourage the private sector and educational institutions to combat the skills crisis by investing in and increasing demand-driven education, training, and re-training, including training through apprenticeships and work-based learning opportunities. The Secretary of Commerce is also requesting nominations for membership to the Board. The President, with input from the Secretary of Commerce and Advisor to the President overseeing the Office of Economic Initiatives (as co-chairs of the Board), will consider nominations received in response to this notice.

DATES: The Department of Commerce must receive nominations for members by midnight on October 1, 2018.

ADDRESSES: Submit nominations to *AmericanWorkforcePolicyAdvisoryBoard@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Grant Gardner, Office of Business Liaison, Department of Commerce, 1401 Constitution Avenue NW, Washington,

DC 20230, (202) 482–2177, and email *GGardner@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. The American Workforce Policy Advisory Board

Our nation is facing a skills crisis. There are currently 6.7 million unfilled jobs in the United States, and American workers need the skills training to fill them. At the same time, the economy is changing at a rapid pace because of the technology, automation, and artificial intelligence that is shaping many industries, from manufacturing to healthcare to retail. For too long, our country's education and job training programs have prepared Americans for the economy of the past.

The rapidly changing digital economy requires the United States to view education and training as encompassing more than a single period of time in a traditional classroom. We need to prepare Americans for the 21st century economy and the emerging industries of the future. We must foster an environment of lifelong learning and skills-based training and cultivate a demand-driven approach to workforce development.

To address the skills crisis, the President issued E.O. 13845 to establish the National Council for the American Worker (Council). The executive order directs the Council to champion effective, results-driven education and training so that American students and workers can obtain the skills they need to succeed in the jobs of today and of the future. This notice announces the establishment of the American Workforce Policy Advisory Board (Board), pursuant to E.O. 13845 and in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), to support the Council.

The Board will provide advice and recommendations to the Council on the workforce policy of the United States. One of the Board's activities will be to recommend steps to encourage the private sector and educational institutions to combat the skills crisis by investing in and increasing demand-driven workforce development, education, training, and re-training, for example through apprenticeships and work-based learning opportunities.

Unless otherwise extended, the Board will terminate July 19, 2020, two years after the date of the Executive Order. Insofar as the FACA may apply to the Board, the Secretary of Commerce will perform any functions of the President under that act, except for those in section 6 and section 14 of FACA, and will do so in accordance with the guidelines issued by the Administrator of General Services. The Department of Commerce shall provide the Board with funding and administrative support as may be necessary for the performance of the Board's functions.

The Board will be made up of two co-chairs—the Secretary of Commerce and the Advisor to the President overseeing the Office of Economic Initiatives—and up to 25 members appointed by the President from among citizens outside the Federal government. Members chosen will be representatives of the various sectors of the economy, including the private sector, employers, educational institutions, and State governments, to offer diverse perspectives on how the Federal Government can improve workforce development through education, training, and re-training for American workers. The Board members appointed by the President could include business leaders; administrators and educators of K–12 schools, community colleges, and universities; State, tribal, and local government officials; heads of organized labor; and leaders from the nonprofit sector. The President will make reasonable efforts to ensure members represent a diverse spectrum of these sectors.

All members appointed by the President will be representative members and serve at the pleasure of the President. The membership balance may adjust depending on the needs of the President, Secretary, and the work of the Council.

II. Description of Board Member Duties

The Board will advise the Council in the Council's efforts to work with private employers, educational institutions, labor unions, other non-profit organizations, and State, territorial, tribal, and local governments to update and reshape our education and job training landscape so that it better meets the needs of American students, workers, and businesses.

Members must be able to actively participate in the tasks of the Board including, but not limited to regularly attending and participating in meetings, reviewing materials, and participating in conference calls, working groups, and formal subcommittees. The Board may advise the Council in any of its efforts, so the President will consider nominees who can best support, in an advisory capacity, any of the following Council functions:

- Devising a national strategy for empowering American workers on how the Federal government can work with non-Federal stakeholders to create and promote workforce development strategies that provide evidence-based, affordable education and skills-based training for youth and adults to prepare them for the jobs of today and of the future;
- fostering close coordination, cooperation, and information exchange within the Federal government and between the government and non-Federal stakeholders as related to issues concerning the education and training of Americans, including through the use of online learning resources;
- increasing transparency related to education and job-training program options, including those options offered at 4-year institutions and community colleges;
- proposing ways to increase access to available job data, including data on industries and geographic locations with the greatest numbers of open jobs and projected future opportunities, as well as data on the underlying skills required to fill open jobs;
- developing a national campaign to raise awareness of relevant matters, such as the urgency of the skills crisis; the importance of science, technology, engineering, and mathematics education; the creation of new industries and job opportunities spurred by emerging technologies; the changing nature of many careers in the trades and manufacturing; and the need for companies to invest in the training and re-training of their workers;
- developing a plan for recognizing companies that demonstrate excellence in workplace education, training, and re-training policies and investments, in order to galvanize industries to identify and adopt best practices, innovate their workplace policies, and invest in their workforces; and
- examining how the Federal government can work with non-Federal stakeholders to support the implementation of recommendations from the Task Force on Apprenticeship Expansion established in Executive Order 13801 of June 15, 2017 (Expanding Apprenticeships in America).

III. Structure of Advisory Board

As stated above, the Secretary and the Advisor to the President overseeing the Office of Economic Initiatives will serve as co-chairs. In addition to the co-chairs, the Board shall consist of up to 25 members. The President will appoint members and they will serve at the pleasure of the President. The Secretary will provide the President with a list of potential nominees for final consideration of Board membership. Potential nominees will represent a cross-section of the private sector, non-profit, employers, educational

institutions, and States. The Secretary's list will ensure balance and a diversity of perspectives. The Secretary's nominees will be prominent in their fields, recognized for their professional and other relevant achievements.

As necessary, the Board may establish, with the consent or at the direction of the Office of the Under Secretary of Economic Affairs and the Office of the Secretary, such subcommittees as it considers necessary for the performance of its functions. All subcommittees must report back to the full Board, members and subcommittees must not provide advice or work products directly to any Federal agency or official.

Appointed Board members will serve for a term of up to two years (the balance of the initial term of the Board). If the term of the Board is extended, members shall be eligible for reappointment, and may continue to serve after the expiration of their terms until the appointment of a successor. When vacancies occur, the Secretary will identify for appointment nominees who can best either replicate the perspective of the departing member or provide the Board with a new, identified needed perspective.

IV. Compensation for Members of the Advisory Board

Members of the Board shall serve without any compensation for their work on the Board. Members of the Board, while engaged in the work of the Board, will, upon request, be reimbursed for travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

V. Solicitation of Nominations

The Secretary will consider nominations of all qualified individuals to ensure that the Board includes the areas of experience noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the Board. Nominations shall state that the nominee is willing to serve as a member and carry out the duties of the Board.

A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of experience; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, return address, email address, and daytime telephone number at which the nominator can be contacted.

The President and the Secretary encourage nominations for appropriately qualified female, minority, or disabled candidates. The President and the Secretary also encourage geographic diversity in the composition of the Board. All nomination information should be provided in a single, complete package by midnight on October 1, 2018. Interested applicants should send their nomination package to *American WorkforcePolicyAdvisoryBoard@doc.gov*.

Dated: August 23, 2018.

Jeremy Pelter,

Chief Financial Officer and Director of Administration for the Economics and Statistics Administration.

[FR Doc. 2018–18893 Filed 8–29–18; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 25, 2018, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Opening remarks by the Bureau of Industry and Security
3. Presentation of papers or comments by the Public
4. Export Enforcement update
5. Regulations update
6. Working group reports
7. Automated Export System update

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3)

The open session will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Joanna Lewis at *Joanna.Lewis@bis.doc.gov* no later than September 18, 2018.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Lewis via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 23, 2018, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public. For more information, call Joanna Lewis at (202) 482–6440.

Joanna Lewis,

Committee Liaison Officer.

[FR Doc. 2018–18803 Filed 8–29–18; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–881]

Malleable Cast Iron Pipe Fittings From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

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

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT or the Court) final judgment in this case is not in harmony with Commerce's final scope ruling and is, therefore, finding that certain cast iron electrical

conduit articles (electrical conduit articles) imported by Atkore Steel Components, Inc. (Atkore), are not within the scope of the antidumping duty order on malleable cast iron pipe fittings (MIPF) from the People's Republic of China (China).

DATES: Applicable August 13, 2018.

FOR FURTHER INFORMATION CONTACT: Alex Rosen, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7814.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2016, Atkore submitted a scope request claiming that electrical conduit articles are outside the scope of the antidumping duty *Order* [1] on MIPF from China.[2] Commerce issued its Final Scope Ruling on MIPF on March 16, 2017, finding that electrical conduit articles were subject to the scope of the *Order*.[3] On May 12, 2017, Atkore filed a complaint with the CIT asking for a review of Commerce's Final Scope Ruling. On May 15, 2018, the CIT remanded the scope ruling on two grounds.[4] First, the CIT held that Commerce's determination was incorrect with regard to its finding that the scope language in the *Order* was unambiguous. Second, the Court held that Commerce's substantive conclusions, responding to Atkore's arguments about the 19 CFR 351.225(k)(1) sources, were unsupported by substantial evidence.

Pursuant to the Court's instructions, Commerce issued the Final Results of Redetermination on Remand.[5] Consistent with the Court's instructions, Commerce conducted an analysis of the (k)(1) sources at the court's direction, but under respectful protest.[6] Upon further analysis of the merchandise under consideration, and based on various 351.225(k)(1) sources on the record, Commerce determined that the record supports a determination that electrical conduit articles are outside the scope of the *Order*.[7] On August 3, 2018, the Court sustained Commerce's Final Remand Results in their entirety.[8]

Timken Notice

In its decision in *Timken,*[9] as clarified by *Diamond Sawblades,*[10] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's August 3, 2018, judgment in this case constitutes a final decision of the court that is not in harmony with Commerce's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of components for MIPF pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its final scope ruling and finds that the scope of the *Order* does not cover the electrical conduit articles specified in Atkore's Scope Request. Commerce will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for certain electrical conduit articles imported by Atkore. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of Atkore's electrical conduit articles without regard to antidumping duties, and to lift suspension of liquidation of such entries.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1) of the Act.

Dated: August 24, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–18827 Filed 8–29–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order: Certain Malleable Iron Pipe Fittings from the People's Republic of China,* 68 FR 69376 (December 12, 2003) (*Order*).

[2] *See* Atkore's Letter, ''Scope Ruling Request: Malleable Cast Iron Pipe Fittings from the People's Republic of China (A–570–881),'' dated October 4, 2016 (Scope Request).

[3] *See* Memorandum, ''Antidumping Duty Order on Malleable Cast Iron Pipe Fittings from the People's Republic of China, Final Scope Ruling Concerning Cast Iron Electrical Conduit Articles,'' dated March 16, 2017 (Final Scope Ruling).

[4] *See Atkore Steel Components, Inc.,* v. *United States,* Court No. 17–00077, Slip Op. 18–52 (CIT 2018).

[5] *See* Final Results of Redetermination Pursuant to Court Remand, Certain Malleable Iron Pipe Fittings from the People's Republic of China, *Atkore Steel Components, Inc.,* v. *United States,* Court No. 17–00077, Slip Op. 18–52 (CIT May 15, 2018), dated July 11, 2018 (Final Remand Results).

[6] *Id.* at 2 (citing *Viraj Group, Ltd.* v. *United States,* 343 F.3d 1371, 1376 (Fed. Cir. 2003) (*Viraj*)).

[7] *See* Final Remand Results at 16.

[8] *See Atkore Steel Components, Inc.* v. *United States,* Court No. 17–00077, Slip Op. 18–94 (CIT 2018).

[9] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[10] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Solicitation for Members of the NOAA Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of solicitation for members of the NOAA Science Advisory Board.

SUMMARY: NOAA is soliciting nominations for members of the NOAA Science Advisory Board (SAB). The SAB is the only Federal Advisory Committee with the responsibility to advise the Under Secretary of Commerce for Oceans, Atmosphere, and NOAA Administrator on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. The SAB consists of approximately fifteen members reflecting the full breadth of NOAA's areas of responsibility and assists NOAA in maintaining a complete and accurate understanding of scientific issues critical to the agency's missions.

DATES: Nominations should be sent to the web address specified below and must be received by October 15, 2018.

ADDRESSES: Applications should be submitted electronically to *noaa.sab.newmembers@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910 (Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov*); or visit the NOAA SAB website at *http://www.sab.noaa.gov.*

SUPPLEMENTARY INFORMATION: At this time, individuals are sought with expertise in cloud computing, artificial intelligence and data management; weather modeling and data assimilation; remote/autonomous sensing technology;

ocean exploration science and technology; and 'omics science. Individuals with expertise in other NOAA mission areas are also welcome to apply.

Composition and Points of View: The Board will consist of approximately fifteen members, including a Chair, designated by the Under Secretary in accordance with FACA requirements.

Members will be appointed for three-year terms, renewable once, and serve at the discretion of the Under Secretary. If a member resigns before the end of his or her first term, the vacancy appointment shall be for the remainder of the unexpired term, and shall be renewable twice if the unexpired term is less than one year. Members will be appointed as special government employees (SGEs) and will be subject to the ethical standards applicable to SGEs. Members are reimbursed for actual and reasonable travel and per diem expenses incurred in performing such duties but will not be reimbursed for their time. As a Federal Advisory Committee, the Board's membership is required to be balanced in terms of viewpoints represented and the functions to be performed as well as the interests of geographic regions of the country and the diverse sectors of U.S. society.

The SAB meets in person three times each year, exclusive of teleconferences or subcommittee, task force, and working group meetings. Board members must be willing to serve as liaisons to SAB working groups and/or participate in periodic reviews of the NOAA Cooperative Institutes and overarching reviews of NOAA's research enterprise.

Nominations: Interested persons may nominate themselves or third parties.

Applications: An application is required to be considered for Board membership, regardless of whether a person is nominated by a third party or self-nominated. The application package must include: (1) The nominee's full name, title, institutional affiliation, and contact information; (2) the nominee's area(s) of expertise; (3) a short description of his/her qualifications relative to the kinds of advice being solicited by NOAA in this Notice; and (4) a current resume (maximum length four [4] pages).

Dated: August 23, 2018.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2018–18815 Filed 8–29–18; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2018–0054]

Filing Patent Applications Electronically During Designated Significant Outages of the United States Patent and Trademark Office Electronic Business Systems

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) encourages applicants to file their patent applications via its electronic filing system (EFS-Web). The USPTO experiences occasional unplanned electronic business system outages, including unplanned system outages that preclude patent applicants and patentees from filing patent documents and fees via the electronic filing system for a significant period of time. This notice prescribes a procedure for filing patent applications by alternative electronic means during a significant unplanned electronic business system outage, as designated by the Director of the USPTO. An application filed by the alternative electronic means prescribed in this notice during a designated significant unplanned electronic business system outage will be considered to have been filed by the USPTO's electronic filing system, and thus will not incur the fee required by section 10(h) of the Leahy-Smith America Invents Act for a patent application not filed by the USPTO's electronic filing system.

DATES:

Applicability date: The alternative electronic filing procedures prescribed in this notice apply to patent applications filed from August 15, 2018 through and including August 23, 2018.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7727, or Erin M. Harriman, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7747.

SUPPLEMENTARY INFORMATION: The USPTO encourages applicants to file their patent applications via its electronic filing system (EFS-Web) and collects a fee as required by section 10(h) of the Leahy-Smith America Invents act for patent applications not filed by electronic means as prescribed by the Director. Information concerning electronic filing via EFS-Web is available from the EFS-Web landing page on the USPTO's internet website (*https://www.uspto.gov/patents-application-process/applying-online/about-efs-web*) and is discussed in section 502.05 of the Manual of Patent Examining Procedure (MPEP).

The USPTO periodically takes various electronic business systems off line (during non-business hours) to perform routine maintenance. The USPTO, however, also experiences occasional unplanned electronic business system outages. While the USPTO is typically able to restore its electronic business systems with sufficient time remaining in a day to permit patent applicants and patentees to file patent documents and fees via the electronic filing system on that day, the USPTO also experiences significant unplanned electronic business system outages that preclude patent applicants and patentees from filing patent documents and fees via the electronic filing system for a significant period of time. The USPTO experienced such a significant unplanned electronic business systems outage beginning on August 15, 2018. This notice prescribes a procedure for filing patent applications by electronic means during a designated significant unplanned electronic business system outage.

The alternative electronic filing means prescribed in this notice is available only when there is a significant unplanned electronic business system outage that precludes patent applicants and patentees from filing patent documents and fees via the electronic filing system for a significant period of time, as designated by the Director of the USPTO (a ''designated significant unplanned electronic business system outage''). The unplanned electronic business systems outage beginning August 15, 2018 is designated as a significant unplanned electronic business system outage, and the alternative electronic filing means prescribed in this notice is available for patent applications filed from August 15, 2018 through and including August 23, 2018. The USPTO will post a notice on its internet website in the event of a future designated significant unplanned electronic business system outage, and indicate the dates during which the alternative electronic filing means prescribed in this notice are available due to such designated significant unplanned electronic business system outage.

37 CFR 1.16(t) and 1.445(a)(1)(ii) implement section 10(h) of the Leahy-Smith America Invents Act, which requires an additional fee for each application for an original (*i.e.,* nonreissue) patent, except for a design, plant, or provisional application, that is

not filed by electronic means as prescribed by the Director of the USPTO. An application filed by the alternative electronic filing means prescribed by this notice during a designated significant unplanned electronic business system outage will be treated as an application filed by electronic means for purposes of section 10(h) of the Leahy-Smith America Invents Act (and by the USPTO's electronic filing system for purposes of 37 CFR 1.16(t) and 1.445(a)(1)(ii)). Thus, the non-electronic filing fee set forth in 37 CFR 1.16(t) and 1.445(a)(1)(ii) is not required for an application filed by the alternative electronic filing means prescribed by this notice during a designated significant unplanned electronic business system outage. The application will also be treated as being filed by the USPTO's electronic filing system for purposes of calculation of the application size fee set forth in 37 CFR 1.52(f)(2) and the reduced basic filing fee for small entities who file in compliance with the USPTO's electronic filing system (37 CFR 1.16(a)). The application, however, will not be treated as being filed by the USPTO's electronic filing system for purposes of the electronic filing discount in the international filing fee (PCT Rule 15 and 37 CFR 1.445(b)).[1]

The alternative electronic filing means during designated significant unplanned electronic business system outages is as follows: The applicant must file the patent application during a designated significant unplanned electronic business system outage by an alternative filing method permitted by 37 CFR 1.6, such as by the Priority Mail Express® service of the U.S. Postal Service under 37 CFR 1.10 or hand delivery[2] to the USPTO. *See* MPEP § 502.05; *see also Legal Framework for Electronic Filing System—Web (EFS-Web),* 74 FR 55200, 55204 (Oct. 27, 2009).[3] Applicants are reminded that unless an application is filed by the Priority Mail Express® service of the U.S. Postal Service in accordance with 37 CFR 1.10, the filing date of the application will be the date on which the application is received at the USPTO headquarters in Alexandria, Virginia. *See* 37 CFR 1.6. In addition, a copy of the application must be filed via EFS-Web (or Patent Center[4]) no later than: (1) One month from the date a filing receipt[5] is first issued for the application, and be accompanied by a request for refund, if the non-electronic filing fee has been paid; or (2) the expiration of the period for reply to a notice requiring payment of the non-electronic filing fee (*e.g.,* a notice to file missing parts under 37 CFR 1.53(f)) if the non-electronic filing fee has not been paid.

The copy of the application filed via EFS-Web (or Patent Center) must be accompanied by a statement that it is a true copy of the original application as filed by the alternative filing method during the designated significant unplanned electronic business system outage. The copy of the application also must be filed via EFS-Web (or Patent Center) as a follow-on paper in the application, and not as a new application. If the copy of the application is filed via EFS-Web (or Patent Center) as a new application, the copy will be treated as a new application, and the application filed by an alternative filing method will not be treated as an application filed by the prescribed alternative electronic filing means. The copy of the application should not be filed until applicant has received either a filing receipt or other USPTO notice identifying the application number assigned to the application.

Dated: August 27, 2018.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2018–18897 Filed 8–29–18; 8:45 am]

BILLING CODE 3510–16–P

[1] The USPTO has no authority to treat an international application filed by the alternative electronic filing means prescribed by this notice as having been filed in the electronic format prescribed by the Administrative Instructions under the PCT for the electronic filing discount in the international filing fee or to waive the international filing fee.

[2] New patent applications hand carried to the USPTO must be delivered to the Customer Service Window in the Randolph Building, 401 Dulany Street, Alexandria, Virginia 22314 (MPEP section 501).

[3] Applicants are reminded that applications filed under 37 CFR 1.53 (except a design continued prosecution application (CPA) under 37 CFR 1.53(d)), PCT international applications, and international design applications cannot be submitted by facsimile transmission. *See* 37 CFR 1.6(d).

[4] Patent Center is a new patent electronic filing and management system that is in development, and which will replace EFS-Web and the Patent Application Information and Retrieval (PAIR) system. Further information concerning Patent Center is available on the USPTO's internet website at *https://www.uspto.gov/patent/initiatives/about-patent-center.*

[5] The term ''filing receipt'' as used in this notice also includes a Notification of the International Application Number and of the International Filing Date (PCT/RO/105) in a PCT application.

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0072]

2019–20 National Postsecondary Student Aid Study (NPSAS: 20) Field Test Institution Contacting and Enrollment List Collection; Cancellation

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice of cancellation.

SUMMARY: On July 3, 2018, the Department of Education (ED) published a 60 day comment period notice in the **Federal Register** with FR DOC #2018–14441 (Page 31383, Column 2 and 3; Page 31384, Column 1 and 2) seeking public comment for an information collection entitled, ''2019–20 National Postsecondary Student Aid Study (NPSAS:20) Field Test Institution Contacting and Enrollment List Collection'' conducted by the National Center for Education Statistics (NCES). The Department of Education would like to cancel that public comment period notice. NCES intends to conduct the NPSAS:20 full-scale study as planned from October 2019 to November 2020. In March 2019, NCES will publish a notice in the **Federal Register** for a 60-day public comment period followed by a 30-day comment period for NPSAS:20 Full-Scale Institution Contacting and Enrollment List Collection clearance request.

The NPSAS:20 full-scale study will use methods and survey items that have already been used in previous cycles of NPSAS. In addition, NCES is developing a cognitive testing plan that will allow pre-testing of a subset of questions from the planned NPSAS:20 student interview. NCES expects to submit a clearance request for these cognitive testing activities by July 2019.

The Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management, hereby issues a cancellation notice as required by the Paperwork Reduction Act of 1995.

Dated: August 27, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–18840 Filed 8–29–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community (Euratom).

DATES: This subsequent arrangement will take effect no sooner than September 14, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Oehlbert, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *sean.oehlbert@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the retransfer of 369,822,000 g of U.S.-obligated natural uranium hexafluoride UF6 (67.6%), 250,000,000 g of which is uranium, from Cameco Corporation (Cameco) in Ontario, Canada, to URENCO Ltd. in Capenhurst, United Kingdom. The material, which is currently located at Cameco in Port Hope, Ontario, Canada, will be used for toll enrichment by URENCO at its facility in Capenhurst, United Kingdom. The material was originally obtained by Cameco from Cameco Resources—Crow Butte Operation, pursuant to export license XSOU8798.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States of America.

Dated: August 1, 2018.

For the Department of Energy.

Brent K. Park,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2018–18830 Filed 8–29–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Department of Energy

Information Collection Extension

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: FE invites public comments on the proposed collection of information, Form FE–746R *Natural Gas Imports and Exports,* as required under the Paperwork Reduction Act of 1995. FE requests a three-year extension, with changes, of Form FE–746R, OMB Control Number 1901–0294. Form FE–746R collects information from prospective and actual importers and exporters of natural gas. Data collected on Form FE–746R are published by DOE's Office of Fossil Energy (FE) in monthly and quarterly publications, and are republished by EIA as part of its natural gas supply and demand statistics. Additionally, the data enable FE to monitor trade activity and support FE's market and regulatory analyses.

DATES: FE must receive all comments on this proposed information collection no later than October 29, 2018.

ADDRESSES: Send your comments to Marc Talbert, FE–34, U.S. Department of Energy, Office of Oil and Natural Gas, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375. Submission by email to *marc.talbert@hq.doe.gov* is recommended.

FOR FURTHER INFORMATION CONTACT: If you need additional information or copies of the information collection instrument, contact Marc Talbert by telephone at (202) 586–7991, or by email at *marc.talbert@hq.doe.gov.* Access to the proposed form and instructions can be found at *http://energy.gov/fe/services/natural-gas-regulationlguidelines-filing-monthlyreports.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1901–0294;

(2) *Information Collection Request Title:* Natural Gas Import and Export Application;

(3) *Type of Request:* Renewal with changes;

(4) *Purpose:* The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with EIA. DOE's Office of Fossil Energy (FE) is delegated the authority to regulate natural gas imports and exports under section 3 of the Natural Gas Act of 1938, 15 U.S.C. 717b. In order to carry out its delegated responsibility, FE requires those persons seeking to import and/or export natural gas to file an application providing basic information on the scope and nature of the proposed import/export activity. Once an importer and/or exporter receives authorization from FE, they are required to submit monthly reports of all import and/or export transactions. Form FE–746R collects critical information on U.S. natural gas trade including: name of the importer/exporter; country of origin/destination; international point of entry/exit; name of supplier; volume; price; transporter; geographic market served; and duration of supply contract on a monthly basis. The data are aggregated and the statistical aggregates are published in *Natural Gas Imports and Exports, The Natural Gas Monthly,* and other reports produced by FE and EIA. The data are used to ensure compliance with the terms and conditions of the authorizations. In addition, the data are used to monitor North American gas trade, which, in turn, enables the Federal government to perform market and regulatory analyses; improve the capability of industry and the government to respond to any future energy-related supply problems; and keep the general public informed of international natural gas trade.

(4a) *Proposed Changes to Information Collection:* Form FE–746 collects information for all modes of natural gas transportation that are used for importing to and/or exporting from the United States, including by pipeline and, in the case of liquefied natural gas (LNG), imports and exports by vessel. FE proposes a change to the confidentiality policy for select information reported on Form FE–746R. Under FE's current practice, FE publishes aggregate price information for natural gas imports and exports by pipeline at the point of entry or exit, but publishes prices at the cargo level for exports and imports of LNG by vessel.

Existing authorization holders raised concerns to FE that the release of their LNG price data at the cargo level may cause competitive harm to them. To address this issue, FE proposes to align price data reporting for natural gas imports and exports by vessel—including LNG—with current data release policies for pipeline import and export movements. Specifically, FE proposes to publish only volume-weighted average import and export prices for LNG and other modes of natural gas transportation by point of entry or exit, as is currently the practice for pipeline imports and exports. Thus, instead of a price being published for each LNG cargo imported or exported, a monthly volume-weighted average price will be published for each point of LNG import or export.

FE proposes the following change in the confidentiality policy for Form FE–746. The current statement ''*Information reported on Form FE–746R will be considered public information and may be publicly released in company identifiable form*'' will be replaced with the new data confidentiality statement that will read: ''*The following information that is reported on Form FE–746R will be protected and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, and the Department of Energy (DOE) regulations, 10 CFR 1004.11, implementing the FOIA.*

- *The Price at Import or Export Point.*
- In the case of natural gas imports and exports for all modes of transportation except pipeline, *The name of the Specific Purchaser/End User.*''

Questions pertaining to Specific Purchaser/End User do not appear on the version of Form FE–746R required for pipeline imports and exports.

All other information reported on Form FE–746R will be considered public information and may be publicly released in company identifiable form.

Data protection methods will not be applied to the aggregate statistical data published from submissions on Form FE–746R. There may be some statistics that are based on data from fewer than three import or export transactions. In these cases, it may be possible for a knowledgeable person to closely estimate the information reported by a specific respondent.

Transaction-level price information for natural gas and LNG imports and exports, including prices for individual LNG import and export cargos, and the name of the Specific Purchaser/End User, will not be publicly released. No information related to natural gas specific customers/end users is currently published. Natural gas import and export price information, including prices for LNG imports and exports, will be aggregated and published by point of entry or exit in FE's and EIA's data publications featuring natural gas import/export information, including the Office of Fossil Energy's *LNG Monthly* and EIA's *Natural Gas Monthly.*

FE also proposes to collect heat content in Btu per cubic foot for LNG imports and exports to account for variations in the heat content of gas being imported from and exported to various countries, so that import and export volume data may be analyzed according to objective standardized units of measurement. The heat content information reported for LNG imports and exports on Form FE–746R will not be protected and may be publicly released in company identifiable form.

(5) *Annual Estimated Number of Respondents:* 371;

(6) *Annual Estimated Number of Total Responses:* 4,452;

(7) *Annual Estimated Number of Burden Hours:* 13,356;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The cost of the burden hours is estimated to be $1,010,916 (13,356 burden hours times $75.69 per hour). FE estimates that respondents will have no additional costs associated with the surveys other than burden hours.

Comments are invited on whether: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information shall have practical utility; (b) FE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) FE can improve quality, utility, and clarity of the information it will collect; and (d) FE can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b) and Section 3 of the Natural Gas Act of 1938, codified at 15 U.S.C. 717b.

Signed in Washington, DC, on August 24, 2018.

Shawn Bennett,

Deputy Assistant Secretary, Office of Oil and Natural Gas.

[FR Doc. 2018–18829 Filed 8–29–18; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0093; FRL–9982–94–OAR]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Clean Air Act Tribal Authority (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Clean Air Act Tribal Authority (Renewal)'' (EPA ICR No. 1676.07, OMB Control No. 2060–0306) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested via the **Federal Register** on May 15, 2018, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before October 1, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–2004–0093, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Pat Childers, Office of Air and Radiation, Immediate Office, (6101A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–1082; fax number: 202–564–0394; email address: *childers.pat@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: This Information Collection Request (ICR) seeks authorization for tribes to demonstrate their eligibility to be treated in the same manner as states under the Clean Air Act (CAA) and to submit applications to implement a CAA program. This ICR extends the collection period of information for determining eligibility, which expires December 31, 2018. The ICR maintains the estimates of burden costs for tribes in completing a CAA application.

The program regulation provides for Indian tribes, if they choose, to assume responsibility for the development and implementation of CAA programs. The regulation, Indian Tribes: Air Quality Planning and Management (Tribal Authority Rule [TAR] 40 CFR parts 9, 35, 49, 50, and 81) sets forth how tribes may seek authority to implement their own air quality planning and management programs. This rule establishes: (1) Which CAA provisions Indian tribes may seek authority to implement; (2) What requirements the tribes must meet when seeking such authorization; and (3) What federal financial assistance may be available to help tribes establish and manage their air quality programs. The TAR provides tribes the authority to administer air quality programs over all air resources, including non-Indian owned fee lands, whining the exterior boundaries of a reservation and other areas over which the tribe can demonstrate jurisdiction. An Indian tribe that takes responsibility for a CAA program would essentially be treated in the same way as a state would be treated for that program.

Form Numbers: None.

Respondents/Affected Entities: States, locals, Indian tribes.

Respondent's Obligation to Respond: Voluntary, required to obtain or retain a benefit Tribal Authority Rule [TAR] 40 CFR parts 9, 35, 49, 50 and 81).

Estimated Number of Respondents: 8 (total).

Frequency of Response: One-time applications.

Total Estimated Burden: 320 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $18,896.00 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: August 15, 2018.

Pat Childers,

OAR Tribal Program Coordinator.

[FR Doc. 2018–18857 Filed 8–29–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0026; FRL–9983–03–OW]

Proposed Information Collection Request; Comment Request; National Water Quality Inventory Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''National Water Quality Inventory Reports (Renewal)'' (EPA ICR No. 1560.11, OMB Control No. 2040–0071) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before submitting the ICR to OMB, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. 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.

DATES: Comments must be submitted on or before October 29, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2003–0026, online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Cynthia N. Johnson, Watershed Restoration, Assessment and Protection Division (WRAPD), Office of Water, Mail Code: 4503T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1679; fax number: 202–566–1336; email address: *Johnson.CynthiaN@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents that explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to Section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Clean Water Act Section 305(b) reports contain information on whether waters assessed by a state meet the state's water quality standards, and, when waters are impaired, the pollutants and potential sources affecting water quality. This information helps State's and the public track progress in addressing water pollution. Section 303(d) of the Clean Water Act requires States to identify and

rank waters that cannot meet water quality standards (WQS) following the implementation of technology-based controls. Under Section 303(d), States are also required to establish total maximum daily loads (TMDLs) for listed waters not meeting standards because of pollutant discharges. In developing the Section 303(d) lists, States are required to consider various sources of water quality related data and information, including the Section 305(b) State water quality reports. Section 106(e) requires that states annually update monitoring data and use it in their Section 305(b) report. Section 314(a) requires states to report on the condition of their publicly owned lakes within the Section 305(b) report.

Pursuant to the Clean Water Act and its implementing regulations, EPA's WRAPD works with its Regional counterparts to review and approve or disapprove State Section 303(d) lists and TMDLs from 56 respondents (the 50 States, the District of Columbia, and the five Territories). Section 303(d) specifically requires States to develop lists and TMDLs, and EPA is to review and approve or disapprove the lists and the TMDLs. EPA also collects State 305(b) reports from 59 respondents (the 50 States, the District of Columbia, five Territories, and 3 River Basin Commissions).

Tribes are not required to submit Section 305(b) reports. However, to meet the needs of Tribes at all levels of development, EPA has prepared guidance that presents the basic steps a Tribe should take to collect the water quality information it needs to make effective decisions about its program, its goals and its future directions. Tribal water quality monitoring and reporting activities are covered under the Section 106 Tribal Grants Program and are not included in the burden estimates for this ICR. In addition, ICR number 2553.02 ''Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act (Final Rule)'' addresses the Tribes' CWA Section 303(d) Impaired Water Listing and TMDL TAS application and 303(d) Program implementation burden, as well as EPA's burden for reviewing the Tribes' applications and 303(d) Program submittals.

During the period covered by this ICR renewal, respondents will: Complete their 2020 Section 305(b) reports and 2020 Section 303(d) lists; complete their 2022 Section 305(b) reports and 2022 Section 303(d) lists; transmit annual electronic updates of ambient monitoring data via the Water Quality Exchange; and continue to develop TMDLs according to their established schedules. EPA will prepare biennial updates on assessed and impaired waters for Congress and the public for the 2020 reporting cycle and for the 2022 cycle, and EPA will review 303(d) list and TMDL submissions from respondents.

The burdens of specific activities that States undertake as part of their Section 305(b) and 303(d) programs are derived from a project among EPA, States and other interested stakeholders to develop a tool for estimating the States' resource needs for State water quality management programs. This project has developed the State Water Quality Management Workload Model (SWQMWM), which estimates and sums the workload involved in more than one hundred activities or tasks comprising a State water quality management program. Over twenty States contributed information about their activities that became the basis for the model. According to the SWQMWM, to meet Section 305(b) and 303(d) reporting requirements the States will conduct: Watershed monitoring and characterization; modeling and analysis; development of Section 303(d) lists and TMDLs for public review; public outreach; formal public participation; tracking; planning; legal support; etc. In general, respondents have conducted each of these reporting and record keeping activities for past Section 305(b) and 303(d) reporting cycles and thus have staff and procedures in place to continue their Section 305(b) and 303(d) reporting programs. The burden associated with these tasks is estimated in this ICR to include the total number of TMDLs that may be submitted during the period covered by this ICR.

Form numbers: None.

Respondents/affected entities: Entities potentially affected by this action are States, Territories and Tribes with Clean Water Act (CWA) responsibilities.

Respondent 's obligation to respond: Mandatory: Integrated Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)).

Estimated number of respondents: 59 (total).

Frequency of response: Biennial.

Total estimated burden: 3,740,017 (per year) hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $214,524,738 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB, published on March 1, 2016. EPA has completed phase 1 of the Water Quality' Framework, which is a new way of integrating EPA's data and information systems to more effectively support reporting and tracking water quality protection and restoration actions. Phase 1 streamlined water quality assessment and reporting by reducing transactions associated with paper copy reviews and increasing electronic data exchange. The system to support this new electronic reporting was released to support the 2018 reporting cycle in April of 2018. Because this is the first year that the new reporting method is being used, EPA will use this reporting cycle to gather information on reporting burden using this new approach. EPA expects the new approach will result in a reduction in reporting burden, but does not have enough information at this time to quantify the reduction. EPA will use the information collected on reporting burden from the 2018 cycle to revise the ICR burden estimates in the next iteration of this ICR.

Dated: August 22, 2018.

John Goodin,

Acting Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 2018–18856 Filed 8–29–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0349]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before October 1, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0349.

Title: Equal Employment Opportunity (''EEO'') Policy, 47 CFR Sections 73.2080, 76.73, 76.75, 76.79 and 76.1702.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not for profit institutions.

Number of Respondents and Responses: 14,179 respondents; 14,179 responses.

Estimated Time per Response: 42 hours.

Frequency of Response: Recordkeeping requirement; annual reporting requirement; five year reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority which covers this information collection is contained in Section 154(i) and 303 of the Communications Act of 1934, as amended, and Section 634 of the Cable Communications Policy Act of 1984.

Total Annual Burden: 595,518 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements approved under this collection are as follows: 47 CFR Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex. Section 73.2080 requires that each broadcast station employment unit with 5 or more full-time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice. These same requirements also apply to Satellite Digital Audio Radio Service (''SDARS'') licensees. In 1997, the Commission determined that SDARS licensees must comply with the Commission's EEO requirements. See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band, 12 FCC Rcd 5754, 5791,) 91 (1997) (''1997 SDARS Order''), FCC 97–70. In 2008, the Commission clarified that SDARS licensees must comply with the Commission's EEO broadcast rules and policies, including the same recruitment, outreach, public file, website posting, record-keeping, reporting, and self-assessment obligations required of broadcast licensees, consistent with 47 CFR 73.2080, as well as any other Commission EEO policies. See Applications for Consent to the Transfer of Control of Licenses, SM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, 23 FCC Rcd 12348, 12426,) 174, and note 551 (2008) (''XM-Sirius Merger Order'').

47 CFR Section 76.73 provides that equal opportunity in employment shall be afforded by all multichannel video program distributors (''MVPD'') to all qualified persons and no person shall be discriminated against in employment by such entities because of race, color, religion, national origin, age or sex.

Section 76.75 requires that each MVPD employment unit employing six or more full-time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a cable entity's policy and practice.

Section 76.79 requires that every MVPD employment unit employing six or more full-time employees maintain, for public inspection, a file containing copies of all annual employment reports and related documents.

Section 76.1702 requires that every MVPD employment unit employing six or more full-time employees place certain information concerning its EEO program in its public inspection file.

Federal Communications Commission.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–18844 Filed 8–29–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1215]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before October 29, 2018. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1215.

Title: Use of Spectrum Bands Above 24 GHz for Mobile Radio Services.

Form Number: N/A.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 280 respondents; 280 responses.

Estimated Time per Response: .5–10 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement; upon commencement of service, or within 3 years of effective date of rules; and at end of license term, or 2024 for incumbent licensees.

Obligation to Respond: Statutory authority for this collection are contained in sections 1, 2, 3, 4, 5, 7, 10, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, and 336 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 160, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, 336, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

Total Annual Burden: 615 hours.

Total Annual Cost: $450,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: In this collection, the Commission adopted new licensing, service, and technical rules under Part 30 of the Commission's Rules for the 24.25–24.45 GHz and 24.75–25.25 GHz bands (collectively, 24 GHz band), the 27.5–28.35 GHz band (28 GHz band), the 38.6–40 GHz band (39 GHz band), the 37–38.6 GHz band (37 GHz band), the 47.2–48.2 GHz band (47 GHz band). Therefore, the Commission expanded the scope of the rules to include additional bands. In turn, since the rules now apply in additional bands, the number of respondents, the annual number of responses, annual burden hours and annual costs will increase for this collection. The Commission also authorizes unlicensed use in the 64–71 GHz band under Part 15. In so doing, the Commission created a consistent framework across all of the bands that can serve as a template for additional bands in the future.

The rules adopted by the Commission, in FCC 17–152 and FCC 18–73 revise the previously approved information collection relating to Section 25.136 of the Commission's Rules. The Commission added the 24 GHz band and the 47 GHz band (47.2–48.2 GHz) to the bands that are subject to the framework for sharing between the Upper Microwave Flexible Use Service (UMFUS) and the Fixed-Satellite Service (FSS) established in that rule. In addition, the Commission modified the sharing criteria between UMFUS and FSS to facilitate deployment of FSS earth stations in smaller markets and decrease the possibility of conflicts between UMFUS and FSS.

Section 25.136—This rule contains both a third-party coordination requirement and a filing requirement. Both requirements are necessary to ensure that Fixed Satellite Service earth stations can receive interference protection without having an undue impact on terrestrial deployment.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–18845 Filed 8–29–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: September 4, 2018; 1:00 p.m.

PLACE: 800 N Capitol Street NW, Washington, DC.

STATUS: This meeting is closed to the public.

MATTERS TO BE CONSIDERED:

Closed Session

1. Fact Finding No. 28: Conditions and Practices Relating to Detention, Demurrage, and Free Time in International Oceanborne Commerce

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Secretary, (202) 523–5725.

JoAnne D. O' Bryant,

Program Analyst.

[FR Doc. 2018–19021 Filed 8–28–18; 4:15 pm]

BILLING CODE 6731–AA–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 applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 2018.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Synovus Financial Corp., Columbus, Georgia;* to merge with FCB Financial Holdings, Inc. and thereby acquire Florida Community Bank, N.A., both of Weston, Florida.

Board of Governors of the Federal Reserve System, August 27, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–18834 Filed 8–29–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 18, 2018.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Karl E. Hill and the Hill S-Corporation Family Exempt Trust, both of Columbus, Texas;* to retain shares of Columbus Bancorp, Inc., and thereby retain shares of The First State Bank, both located in Columbus, Texas. In addition, Notificants have applied to join the Hill Group, as a group acting in concert, to own shares of Columbus Bancorp, Inc.

Board of Governors of the Federal Reserve System, August 27, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–18833 Filed 8–29–18; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112; Docket No. 2018–0001; Sequence No. 8]

Information Collection; Federal Management Regulation; State Agency Monthly Donation Report of Surplus Property, GSA Form 3040

AGENCY: Federal Acquisition Service, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding State Agency Monthly Donation Report of Surplus Property, GSA Form 3040.

DATES: Submit comments on or before October 29, 2018.

ADDRESSES: Submit comments identified by Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching for Information Collection 3090–0112. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0112; State Agency Monthly Donation Report of Surplus Personal Property'' under the heading ''Enter Keyword or ID'' and select ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property.

Instructions: Please submit comments only and cite Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Christopher Willett, Property Disposal Specialist, GSA Office of Personal Property Management, at telephone 703–605–2873 or via email to *christopher.willett@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This report complies with 41 CFR 102–37.360, which requires a State Agency for Surplus Property (SASP) to submit annual reports of personal property donated to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 56.
Responses per Respondent: 4.
Total Responses: 224.
Hours per Response: 1.5.
Total Burden Hours: 336.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0112, GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence.

Dated: August 22, 2018.

David A. Shive,

Chief Information Officer.

[FR Doc. 2018–18788 Filed 8–29–18; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0014; Docket No. 2018–0001; Sequence No. 7]

Information Collection; Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123

AGENCY: Federal Acquisition Service, General Services Administration (GSA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123.

DATES: Submit comments on or before: October 29, 2018.

ADDRESSES: Submit comments identified by Information Collection 3090–0014, Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0014, Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0014, Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123,'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0014.

Instructions: Please submit comments only and cite Information Collection 3090–0014, Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Willett, Property Disposal Specialist, GSA Office of Personal Property Management, at telephone 703–605–2873 or via email to *christopher.willett@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Transfer Order—Surplus Personal Property and Continuation Sheet, Standard form (SF) 123, is used by a State Agency for Surplus Property (SASP) to donate Federal surplus personal property to public agencies, nonprofit educational or public health activities, programs for the elderly, service educational activities, and public airports. The SF 123 serves as the transfer instrument and includes item descriptions, transportation instructions, nondiscrimination assurances, and approval signatures.

B. Annual Reporting Burden

Respondents (electronic): 30,890.
Respondents (manual): 312.
Total Number of Respondents: 31,202.
Total Hours per Response (electronic at .017 Hours per Response): 525.13.
Total Hours per Response (manual at .13 Hours per Response): 40.56.
Total Burden Hours: 565.69.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC, 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0014, Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123, in all correspondence.

Dated: August 22, 2018.

David A. Shive,

Chief Information Officer.

[FR Doc. 2018–18790 Filed 8–29–18; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1041]

Development of a Shared System Risk Evaluation and Mitigation Strategy; Draft Guidance for Industry; Availability; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the notice of availability for ''Development of a Shared System Risk Evaluation and Mitigation Strategy; Draft Guidance for Industry,'' published in the **Federal Register** of June 1, 2018. The Agency has received a request for an extension of the comment period for the draft guidance.

DATES: FDA is reopening the comment period on the notice of availability published June 1, 2018 (83 FR 25468). Submit either electronic or written comments on the draft guidance by September 13, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1041 for ''Development of a Shared System Risk Evaluation and Mitigation Strategy; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lubna Merchant, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4418, Silver Spring, MD 20993–0002, 301–796–5162, email: *Lubna.Merchant@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 1, 2018 (83 FR 25468), FDA published a notice of availability with a 60-day comment period to request comments on the draft guidance for industry entitled ''Development of a Shared System Risk Evaluation and Mitigation Strategy.''

The Agency has received a request for an extension of the comment period for the draft guidance. FDA has considered the request and is reopening the comment period for the draft guidance until September 13, 2018. The Agency believes that a 14-day reopening of the comment period allows adequate time for interested persons to submit comments to ensure that the Agency can consider the comments on this draft guidance before it begins work on the final version of the guidance.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: August 23, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–18775 Filed 8–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0049]

Complex Innovative Designs Pilot Meeting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The sixth iteration of the Prescription Drug User Fee Act (PDUFA VI), incorporated as part of the FDA Reauthorization Act of 2017 (FDARA), highlights the goal of facilitating and advancing the use of complex adaptive, Bayesian, and other novel clinical trial designs. The Food and Drug Administration (FDA or Agency) is announcing a pilot meeting program that affords sponsors who are selected the opportunity to meet with Agency staff to discuss the use of complex innovative trial design (CID) approaches in medical product development. Meetings under the pilot program will be conducted by FDA's Center for Drug Evaluation and Research (CDER) or Center for Biologics Evaluation and Research (CBER) during fiscal years 2018 to 2022. This pilot meeting program fulfills FDA's commitment under PDUFA VI. For each sponsor whose meeting request is granted as part of the pilot, FDA will grant two meetings between the sponsor and CDER or CBER that will provide an opportunity for medical product developers and FDA to discuss regulatory approaches for CID. To promote innovation in this area, trial designs developed through the pilot meeting program may be presented by FDA (*e.g.,* in a guidance or public workshop) as case studies, including

trial designs for drugs that have not yet been approved by FDA.

DATES: The CID pilot meeting program will proceed from the date of this notice through September 30, 2022. Sponsors may submit meeting requests for the pilot program through June 30, 2022. Comments about this pilot meeting program can be submitted until October 1, 2018. Please note that late, untimely filed comments will not be considered.

ADDRESSES: You may submit comments about the CID pilot meetings program as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–0049 for ''Complex Innovative Designs Pilot Meeting Program.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT:

CDER: Scott Goldie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm 3557, Silver Spring, MD 20993–0002, 301–796–2055, *Scott.Goldie@fda.hhs.gov,* with the subject line ''CID Pilot Meeting Program for CDER.''

CBER: Christopher Egelebo, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm 1043, Silver Spring, MD 20993–0002, 240–402–8625, *Christopher.Egelebo@fda.hhs.gov,* with the subject line ''CID Pilot Meeting Program for CBER.''

SUPPLEMENTARY INFORMATION:

I. Background

In connection with the sixth iteration of PDUFA, FDA committed to conduct a pilot program for highly innovative trial designs for which analytically derived properties (*e.g.,* Type I error) may not be feasible, and simulations are necessary to determine trial operating characteristics. The Agency also committed to issue a **Federal Register** Notice announcing the pilot program, clarifying pilot program eligibility, and describing the proposal submission and selection process (see PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2018 Through 2022, section I.J.4.b. (*https://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM511438.pdf*)).

FDA is announcing this pilot meeting program to satisfy the above-mentioned commitments. The goal of the early meeting discussions granted under this pilot program is to provide advice on how a proposed CID approach can be used in a specific drug development program and to promote innovation by allowing FDA to publicly present the trial designs considered through the pilot program, including trial designs for drugs that have not yet been approved by FDA. FDA has committed to accepting up to two meeting requests quarterly each fiscal year.

Meeting requests may be submitted on a rolling basis; however, only those requests received by the quarterly closing date, which will be the last day of each quarter of the fiscal year (*i.e.,* December 31, March 31, June 30, September 30), will be considered for selection in the following quarter. Within 45 days after the quarterly closing date, FDA will review the submissions, select up to four meeting requests each quarter, two primary and two alternates to proceed to disclosure discussions, and notify sponsors of their status. If FDA and the sponsor of a meeting request selected as primary are unable to reach an agreement on the elements for public disclosure, the Agency will proceed with an alternate submission. When disclosure discussions are complete, FDA will grant up to two meetings per quarter under the pilot.

The meetings granted will include an initial and followup meeting on the same CID and medical product within the span of approximately 120 days. Being granted a meeting as part of the pilot meeting program does not mean that the proposed CID is appropriate for

regulatory decision making. Likewise, being denied a meeting as part of the pilot meeting program does not mean that the proposed CID is unacceptable for regulatory decision making. Sponsors who do not participate in the pilot program may seek Agency interaction on their clinical development plan through existing channels (*e.g.,* Type C meeting requests, Critical Path Innovation Meetings).

The listed eligibility factors and procedures outlined in this **Federal Register** notice reflect the current thinking at the time of publication. Processes may be revised as this pilot program evolves and will be communicated on the CID Pilot Meeting Program website: *https://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/UCM617212.htm.*

II. Eligibility and Selection for Participation in the CID Pilot Meeting Program

To be eligible for the CID Pilot Meeting Program:

- The sponsor must have a pre-IND or IND number for the medical product(s) included in the CID proposal with the intent of implementing the CID in the pilot program application.
- The proposed CID is intended to provide substantial evidence of effectiveness to support regulatory approval of the medical product.
- The trial is not a first in human study, and there is sufficient clinical information available to inform the proposed CID.
- The sponsor and FDA are able to reach agreement on the trial design information to be publicly disclosed.

Recognizing that the FDA will learn both from the number and types of submissions received, FDA welcomes submissions related to any eligible CID. However, given that the Agency expects to grant up to two meeting requests per quarter as part of the pilot program, the Agency currently intends to select requests based on the following:

- Innovative features of the trial design, particularly if the innovation may provide advantages over alternative approaches. Initial priority will be given to trial designs for which analytically derived properties (*e.g.,* type I error) may not be feasible and simulations are necessary to determine operating characteristics.
- Therapeutic need (*i.e.,* therapies being developed for use in disease areas where there are no or limited treatments).

III. Procedures and Submission Information

A. General Information

The CID pilot meeting program will be jointly administered by the following centers:

- *CDER:* CDER's Office of Biostatistics, in the Office of Translational Sciences, which is the point of contact for all communications for CDER products.
- *CBER:* CBER's Office of Biostatistics and Epidemiology, which is the point of contact for all communications for CBER products.

B. How To Submit a Meeting Request and Meeting Package

Meeting requests should be submitted electronically to the relevant application (*i.e.,* pre-IND, IND) with ''CID Pilot Program Meeting Request for CDER'' (CDER applications) or ''CID Pilot Program Meeting Request for CBER'' (CBER applications) in the subject line. Information about providing regulatory submissions in electronic format is available at: *https://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/%20ElectronicSubmissions/ucm153574.htm.*

C. Content and Format of the Meeting Request

Include the following information in the meeting request (25 pages or less):

1. Product name.
2. Application number.
3. Proposed indication(s) or context of product development.
4. A background section that includes a brief history of the development program and the status of product development.
5. Trial objectives.
6. Brief rationale for the choice of the proposed CID.
7. Description of study design, including study schema with treatment arms, randomization strategy, and endpoints.
8. Key features of the statistical analysis plan including, but not limited to, the analyses, models, analysis population, approach to handle missing data, and decision criteria. These should include aspects of the design that may be modified and the corresponding rules for decisions, if adaptive.
9. Simulation plan, including the set of parameter configurations that will be used for the scenarios to be simulated and preliminary evaluation and discussion of design operating characteristics. Preliminary simulation results of the operating characteristics (*e.g.,* type 1 error, power, etc.) should include several hypothetical, plausible scenarios.
10. Elements of the study design that the sponsor considers non-disclosable, along with a rationale for exclusion.
11. A list of issues for discussion with the Agency about the specific CID proposed approach for the applicable drug development program and a summarized list of next steps in the regulatory decision making process along with any supporting data relevant to the discussion.

D. Content and Format of the Meeting Information Package

Sponsors whose meeting requests are granted as part of the pilot program should submit a meeting information package electronically with ''CID Pilot Program Meeting Package for CDER'' (CDER applications) or ''CID Pilot Program Meeting Package for CBER'' (CBER applications) in the subject line no later than 30 days before the initial meeting and no later than 90 days before the followup meeting.

The initial meeting package should include the following information:

1. Product name.
2. Application number.
3. Proposed agenda, including estimated times needed for discussion of each agenda item.
4. List of questions for discussion along with a brief summary of each question that explains the need or context for the question.
5. Detailed description of the statistical methodology including, but not limited to, the analyses, models, analysis population, approach to handle missing data, and decision criteria.
6. Detailed simulation report that includes the following:

a. Example trials in which a small number of hypothetical trials are described with different conclusions.

b. Description of the set of parameter configurations used for the simulation scenarios, including a justification of the adequacy of the choices.

c. Simulation results detailing the simulated type I error probability and power under various scenarios.

d. Simulation code that is readable, adequately commented on, and includes the random seeds. The code should preferably be written in widely-used programming languages such as R or SAS to facilitate the simulation review.

7. Overall conclusions including a brief summary of the simulated operating characteristics based on design features and analyses and a discussion of the utility of the CID given the simulation results.

The followup meeting package should include the following information:

1. Product name.
2. Application number.

3. Updated background section that includes a brief history of the development program and the status of product development and clinical data to date, if applicable.

4. Proposed agenda, including estimated times needed for discussion of each agenda item.

5. List of questions for discussion with a brief summary of each question that explains the need or context for the question.

6. Updated programs/shells for simulations, if applicable.

7. Summary of new information that is available to support discussions.

E. Meeting Summaries

A meeting summary will be sent to the sponsor within 60 days of each meeting.

F. Disclosure

To promote innovation and to provide better clarity on the acceptance of different types of trial designs, trial designs developed through the pilot program may be presented by FDA (*e.g.,* in a guidance or public workshop) as case studies, including while the drug studied in the trial has not yet been approved by FDA. Accordingly, before FDA grants the initial meeting under this pilot program, FDA and the sponsor must agree on the information that FDA may include in these public case studies. The specific information to be disclosed will depend on the content of each application, but FDA intends to focus on information that is beneficial to advancing the use of CIDs, and those elements relevant to the understanding of the CID and its potential use in a clinical trial intended to support regulatory approval. Generally, the Agency does not anticipate that the case studies will need to include information such as molecular structure, the sponsor's name, product name, subject-level data, recruitment strategies, adverse events, or a complete description of study eligibility criteria. FDA does anticipate that the following information will generally need to be disclosed to facilitate discussion of the proposed CID: Study endpoints to the degree necessary to describe the design (*e.g.,* overall survival in the context of a time to event analysis), target population, sample size and power determination, null and alternative hypotheses, key operating characteristics, assumed rates for dichotomous outcomes or mean and variance for continuous outcomes, simulation objectives, simulation scenarios, assumptions (*e.g.,* dropout rate, rate of enrollment), modeling characteristics, critical study design characteristics including any adaptive elements (*e.g.,* decision criteria to add/drop a dose, etc.), and, if a Bayesian approach, how Bayesian methods are being used for design and/or analysis purposes.

It is important that sponsors wishing to participate in the pilot program identify aspects of the design and analysis that they consider non-disclosable and provide a rationale for withholding the information. Participation in the pilot program, including any agreement on information disclosure, will be voluntary and at the discretion of the sponsor. Sponsors that do not wish to make such disclosures may seek regulatory input through other existing channels.

IV. Paperwork Reduction Act of 1995

This notice refers to collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information resulting from formal meetings between sponsors or applicants and FDA has been approved under OMB control number 0910–0429. The collection of information in 21 CFR part 312 (investigational new drug applications) has been approved under OMB control number 0910–0014.

Dated: August 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–18801 Filed 8–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–4119]

Food Safety Modernization Act Third-Party Certification Program User Fee Rate for Fiscal Year 2019

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2019 annual fee rate for recognized accreditation bodies and accredited certification bodies, and the fee rate for accreditation bodies applying to be recognized in the third-party certification program that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). We are also announcing the fee rate for certification bodies that are applying to be directly accredited by FDA.

DATES: This fee is effective October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Donald Prater, Office of Foods and Veterinary Medicine, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3234, Silver Spring, MD 20993, 301–348–3007.

SUPPLEMENTARY INFORMATION:

I. Background

Section 307 of FSMA, Accreditation of Third-Party Auditors, amended the FD&C Act to create a new provision, section 808, under the same name. Section 808 of the FD&C Act (21 U.S.C. 384d) directs FDA to establish a program for accreditation of third-party certification bodies [1] conducting food safety audits and issuing food and facility certifications to eligible foreign entities (including registered foreign food facilities) that meet our applicable requirements. Under this provision, we established a system for FDA to recognize accreditation bodies to accredit certification bodies, except for limited circumstances in which we may directly accredit certification bodies to participate in the third-party certification program.

Section 808(c)(8) of the FD&C Act directs FDA to establish a reimbursement (user fee) program by which we assess fees and require reimbursement for the work FDA performs to establish and administer the third-party certification program under section 808 of the FD&C Act. The user fee program for the third-party certification program was established by a final rule entitled ''Amendments to Accreditation of Third-Party Certification Bodies To Conduct Food Safety Audits and To Issue Certifications To Provide for the User Fee Program'' (81 FR 90186, December 14, 2016).

The FSMA FY 2019 third-party certification program user fee rate announced in this notice is effective on October 1, 2018, and will remain in effect through September 30, 2019.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2019

In each year, the costs of salary (or personnel compensation) and benefits

[1] For the reasons explained in the third-party certification final rule (80 FR 74570 at 74578–74579, November 27, 2015), and for consistency with the implementing regulations for the third-party certification program in 21 CFR parts 1, 11, and 16, this notice uses the term ''third-party certification body'' rather than the term ''third-party auditor'' used in section 808(a)(3) of the FD&C Act.

for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2019

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: Payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2019 cost. The FY 2019 FDA-wide average cost for payroll (salaries and benefits) is $157,731; non-payroll—including equipment, supplies, information technology, general and administrative overhead—is $91,008; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $24,400 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2019 average fully supported cost to $273,139 per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification user fees for FY 2019 prior to including travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2019 average fully supported cost of $273,139 per FTE by the average number of supported direct FDA work hours in FY 2017—the last FY for which data are available. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2017

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	−80
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
26.5 days of general administration	−184
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	= 1,160

Dividing the average fully supported FTE cost in FY 2019 ($273,139) by the total number of supported direct work hours available for assignment in FY 2017 (1,160) results in an average fully supported cost of $235 (rounded to the nearest dollar), excluding travel costs, per supported direct work hour in FY 2019.

B. Adjusting FY 2017 Travel Costs for Inflation To Estimate FY 2019 Travel Costs

To adjust the hourly rate for FY 2019, FDA must estimate the cost of inflation in each year for FY 2018 and FY 2019. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2018 inflation rate to be 1.6868 percent; this rate was published in the FY 2018 PDUFA user fee rates notice in the **Federal Register** (82 FR 43244, September 14, 2017). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 1.6868 percent for FY 2018 and 1.7708 percent for FY 2019, and FDA intends to use this inflation rate to make inflation adjustments for FY 2019 for several of its user fee programs; the derivation of this rate is published in the **Federal Register** in the FY 2019 notice for the PDUFA user fee rates (83 FR 37504 at 37505, August 1, 2018). The compounded inflation rate for FYs 2018 and 2019, therefore, is 1.034875 (or 3.4875 percent) (1 plus 1.6868 percent times 1 plus 1.7708 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $235 already takes into account inflation as the calculation above is based on FY 2019 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification program fees for FY 2019 prior to including travel costs as applicable for the activity. For the purpose of estimating the fee, we are using the travel cost rate for foreign travel because we anticipate that the vast majority of onsite assessments made by FDA under this program will require foreign travel. In FY 2017, the Office of Regulatory Affairs spent a total of $2,566,050 on 480 foreign inspection trips related to FDA's Center for Food Safety and Applied Nutrition and Center for Veterinary Medicine field activities programs, which averaged a total of $5,346 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $5,346 per trip by 120 hours per trip results in a total and an additional cost of $45 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2017. To adjust $45 for inflationary increases in FY 2018 and FY 2019, FDA must multiply it by the same inflation factor mentioned previously in this document (1.034875 or 3.4875 percent), which results in an estimated cost of $47 (rounded to the nearest dollar) per paid hour in addition to $235 for a total of $282 per paid hour ($235 plus $47) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2019 when travel is required for the third-party certification program.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2019

Fee category	Fee rates for FY 2019
Hourly rate without travel	$235
Hourly rate if travel is required	282

III. Fees for Accreditation Bodies and Certification Bodies in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

The third-party certification program assesses application fees and annual fees. In FY 2019, the only fees that could be collected by FDA under section 808(c)(8) of the FD&C Act are the initial application fee for accreditation bodies seeking recognition, the annual fee for recognized accreditation bodies, the annual fee for certification bodies accredited by a recognized accreditation body, and the initial application fee for a certification body seeking direct accreditation from FDA. Table 3 provides an overview of the fees for FY 2019.

TABLE 3—FSMA THIRD-PARTY CERTIFICATION PROGRAM USER FEE SCHEDULE FOR FY 2019

Fee category	Fee rates for FY 2019
Initial Application Fee for Accreditation Body Seeking Recognition	$38,211
Annual Fee for Recognized Accreditation Body	1,775
Annual Fee for Accredited Certification Body	2,219
Initial Application Fee for a Certification Body Seeking Direct Accreditation from FDA	38,211

A. Application Fee for Accreditation Bodies Applying for Recognition in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(1) (21 CFR 1.705(a)(1)) establishes an application fee for accreditation bodies applying for initial recognition that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for recognition of accreditation bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 60 person-hours to review an accreditation body's submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 45 person-hours to prepare a written report documenting the onsite assessment.

FDA employees are likely to review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $235/hour, to calculate the portion of the user fee attributable to those activities: $235/hour × (60 hours + 45 hours) = $24,675. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most accreditation bodies are anticipated to be located in foreign countries. For this portion of the fee we use the fully supported FTE hourly rate for work requiring travel, $282/hour, to calculate the portion of the user fee attributable to those activities: $282/hour × 48 hours (*i.e.,* two fully supported FTEs × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $13,536. The estimated average cost of the work FDA performs in total for reviewing an initial application for recognition for an accreditation body based on these figures would be $24,675 + $13,536 = $38,211. Therefore, the application fee for accreditation bodies applying for recognition in FY 2019 will be $38,211.

B. Annual Fee for Accreditation Bodies Participating in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for each recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single recognized accreditation body and annualizes that over the average term of recognition. At this time we assume an average term of recognition of 5 years. We also assume that FDA will monitor 10 percent of recognized accreditation bodies onsite. As the program proceeds, we will adjust the term of recognition as appropriate. We estimate that for one performance evaluation of a recognized accreditation body, it would take, on average (taking into account that not all recognized accreditation bodies would be monitored onsite), 24 hours for FDA to conduct records review, 8 hours to prepare a report detailing the records review and onsite performance evaluation, and 4.8 hours of onsite performance evaluation (*i.e.,* 10 percent × two fully supported FTEs × ((2 travel days × 8 hours)) + (1 day onsite × 8 hours))). Using the fully supported FTE hourly rates in table 2, the estimated average cost of the work FDA performs to monitor performance of a single recognized accreditation body would be $7,520 ($235/hour × (24 hours + 8 hours)) plus $1,354 ($282/hour × 4.8 hours), which is $8,874. Annualizing this amount over 5 years would lead to an annual fee for recognized accreditation bodies of $1,775 for FY 2019.

C. Annual Fee for Certification Bodies Accredited by a Recognized Accreditation Body in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for a certification body accredited by a recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single certification body accredited by a recognized accreditation body and annualizes that over the average term of accreditation. At this time we assume an average term of accreditation of 4 years. This fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. We estimate that FDA would conduct, on average, the same activities, for the same amount of time to monitor certification bodies accredited by a recognized accreditation body as we would to monitor an accreditation body recognized by FDA. Using the fully supported FTE hourly rates in table 2, the estimated average cost of the work FDA performs to monitor performance of a single accredited certification body would be $7,520 ($235/hour × (24 hours + 8 hours)) plus $1,354 ($282/hour × 4.8 hours), which is $8,874. Annualizing this amount over 4 years would lead to an annual fee for accredited certification bodies of $2,219 for FY 2019.

D. Initial Application Fee for Certification Bodies Seeking Direct Accreditation From FDA in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(3) establishes an application fee for certification bodies applying for direct accreditation from FDA that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for direct accreditation of certification bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 60 person-hours to review a certification body's submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 45 person-hours to prepare a written report documenting the onsite assessment.

FDA employees are likely to review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $235/hour, to calculate the portion of the user fee attributable to those activities: $235/hour × (60 hours + 45 hours) = $24,675. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most certification bodies are anticipated to be located in foreign countries. For this portion of the fee we use the fully supported FTE hourly rate for work requiring travel, $282/hour, to calculate the portion of the user fee attributable to those activities: $282/

hour × 48 hours (*i.e.,* two fully supported FTEs × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $13,536. The estimated average cost of the work FDA performs in total for reviewing an initial application for direct accreditation of a certification body based on these figures would be $24,675 + $13,536 = $38,211. Therefore, the application fee for certification bodies applying for direct accreditation from FDA in FY 2019 will be $38,211.

IV. Estimated Fees for Accreditation Bodies and Certification Bodies in Other Fee Categories for FY 2019

Section 1.705(a) also establishes application fees for recognized accreditation bodies submitting renewal applications and certification bodies applying for renewal of direct accreditation. Section 1.705(b) also establishes annual fees for certification bodies directly accredited by FDA.

Although we will not be collecting these other fees in FY 2019, for transparency and planning purposes, we have provided an estimate of what these fees would be for FY 2019 based on the fully supported FTE hourly rates for FY 2019 and estimates of the number of hours it would take FDA to perform relevant activities as outlined in the Final Regulatory Impact Analysis for the Third-Party Certification Regulation. Table 4 provides an overview of the estimated fees for other fee categories.

TABLE 4—ESTIMATED FEE RATES FOR OTHER FEE CATEGORIES UNDER THE FSMA THIRD-PARTY CERTIFICATION PROGRAM

Fee category	Estimated fee rates for FY 2019
Renewal application fee for recognized accreditation body ...	$21,350
Renewal application fee for directly accredited certification body	28,999
Annual fee for certification body directly accredited by FDA	21,056

V. How must the fee be paid?

Accreditation bodies seeking initial recognition must submit the application fee with the application.

For recognized accreditation bodies and accredited certification bodies, an invoice will be sent annually. Payment must be made within 30 days of the invoice date. Detailed payment information will be included with the invoice when it is issued.

VI. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in 21 CFR 1.725. If FDA does not receive an application fee with an application for recognition, the application will be considered incomplete and FDA will not review the application. If a recognized accreditation body fails to submit its annual user fee within 30 days of the due date, we will suspend its recognition. If the recognized accreditation body fails to submit its annual user fee within 90 days of the due date, we will revoke its recognition. If an accredited certification body fails to pay its annual fee within 30 days of the due date, we will suspend its accreditation. If the accredited certification body fails to pay its annual fee within 90 days of the due date, we will withdraw its accreditation.

Dated: August 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–18802 Filed 8–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, NIBIB Team-based R25 Review (2019/01).

Date: September 24, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail@nih.gov.*

Dated: August 23, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18769 Filed 8–29–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program Board of Scientific Counselors; Announcement of Meeting; Request for Comments

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the National Toxicology Program (NTP) Board of Scientific Counselors (BSC). The BSC, a federally chartered, external advisory group composed of scientists from the public and private sectors, will review and provide advice on programmatic activities. This meeting is by webcast only and is open to the public. Registration is requested for oral comment and is required to access the webcast. Information about the meeting and registration are available at *http://ntp.niehs.nih.gov/go/165*.

DATES:

Meeting: October 9, 2018; 1:00—4:00 p.m. (EDT).

Written Public Comment Submissions: Deadline is October 1, 2018.

Oral Comments: Deadline is October 1, 2018.

Registration to view the webcast: Deadline October 9, 2018.

Registration to view the meeting via the webcast is required.

ADDRESSES:

Meeting Webpage: The preliminary agenda, registration, and other meeting materials are at *http://ntp.niehs.nih.gov/go/165*.

Webcast: The meeting will be webcast; the URL will be provided to those who register for viewing.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Wolfe, Designated Federal Official for the BSC, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 984–287–3209, Fax: 301–451–5759, Email: *wolfe@niehs.nih.gov*. Hand Deliver/Courier address: 530 Davis Drive, Room K2130, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION: The BSC will provide input to the NTP on programmatic activities and issues. Preliminary agenda topics include discussions on strategic realignment of NTP and updates on peer reviews. Please see the preliminary agenda for information about the specific presentations. The preliminary agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting website (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Official for the BSC. Following the meeting, summary minutes will be prepared and made available on the BSC meeting website.

Meeting and Registration: The meeting is open to the public with time scheduled for oral public comments. Registration to view the webcast is by October 9, 2018, at *http://ntp.niehs.nih.gov/go/165*. Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Written Public Comments: NTP invites written and oral public comments on the agenda topics. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf*. The deadline for submission of written comments is October 1, 2018. Written public comments should be submitted through the meeting website. Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP website, and the submitter will be identified by name, affiliation, and sponsoring organization (if any).

Oral Public Comments: Registration for oral comments is on or before October 1, 2018, at *http://ntp.niehs.nih.gov/go/165*. Oral comments will be received only during the formal public comment periods indicated on the preliminary agenda. Oral comments may be by teleconference line. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Each organization is allowed one time slot, and five minutes will be allotted to each time slot.

Meeting Materials: The preliminary meeting agenda is available on the meeting web page (*http://ntp.niehs.nih.gov/go/165*) and will be updated one week before the meeting. Individuals are encouraged to access the meeting web page to stay abreast of the most current information regarding the meeting.

Background Information on the BSC: The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets biannually. The authority for the BSC is provided by 42 U.S.C. 217a, section 222 of the Public Health Service Act (PHS), as amended.

The BSC is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of advisory committees.

Dated: August 20, 2018

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2018–18778 Filed 8–29–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Yogikala Prabhu, Ph.D., 301–761–7789; *prabhuyo@niaid.nih.gov*. Licensing information and copies of the patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Methods of Diagnosing and Treating CHAPLE, a Newly Identified Orphan Disease Description of Technology

This technology is directed towards a potential treatment for a new disease, CHAPLE (*C*omplement *H*yperactivation, *A*ngiopathic thrombosis, and *P*rotein-*L*osing *E*nteropathy), identified by NIAID researchers. CHAPLE is associated with GI symptoms and vascular thrombosis and is caused by loss-of-function variants in the gene encoding the complement regulatory protein CD55. The disease is caused by enhanced activation of the complement pathway and complement-mediated induction of intestinal lymphangiectasia and protein-losing enteropathy. There is no current therapy for the newly described heritable genetic disorder and the symptoms are poorly controlled. CHAPLE is similar to other complement activating diseases that can be fatal, particularly for patients who develop severe thrombosis. Recent off-label use of a complement inhibiting drug, eculizumab (CD55 inhibitor) was shown to provide a dramatic benefit in patients with CHAPLE disease with an immediate correction of gastrointestinal protein loss. Thus, identification of CD55 deficiency in CHAPLE patients, and the possibility to use complement inhibitory drugs provide opportunities for treatment.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications

- Diagnostic.
- Therapeutic.

Competitive Advantages

- There is no therapy currently approved for CHAPLE disease, and

patients face a debilitating and often time fatal course of the disease.

• Anti-complement drugs (including eculizumab) has the potential to treat CHAPLE disease.

Development Stage

• Pre-clinical.
• Clinical.

Inventors

Dr. Michael J. Lenardo (NIAID), Dr. Helen Su (NIAID), Ahmet Ozen (NIAID), William A. Comrie (NIAID), Mr. Rico C. Ardy (CeMM, Austria), and Dr. Kaan Boztug (CeMM, Austria).

Intellectual Property

HHS Reference No. E–251–2016/0, U.S. Provisional Patent Application Number 62/394,630, filed September 14, 2016, and PCT/US2017/051413 filed September 13, 2017.

Licensing Contact

Yogikala Prabhu, Ph.D., 301–761–7789; *prabhuyo@niaid.nih.gov*.

Collaborative Research Opportunity

The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the use of Eculizumab or other complement inhibitory drugs for the treatment of CHAPLE. For collaboration opportunities, please contact Yogikala Prabhu, Ph.D., 301–761–7789; *prabhuyo@niaid.nih.gov*.

Dated: August 18, 2018.

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–18779 Filed 8–29–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared and High-end Mass Spectrometers.

Date: September 20–21, 2018.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1504, *sudha.veeraraghavan@nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.

Date: September 26–27, 2018

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Neural regulation of Cancer.

Date: September 26, 2018.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301–495–1718, *jakobir@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 23, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18772 Filed 8–29–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) 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 Center for Advancing Translational Sciences Special Emphasis Panel CTSA.

Date: September 13–14, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Brookside Conference Rooms A & B, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, Office of Scientific Director, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892–4878, 301–435–0813, *henriquv@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 23, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18773 Filed 8–29–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4377–DR; Docket ID FEMA–2018–0001]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4377–DR), dated July 6, 2018, and related determinations.

DATES: This amendment was issued July 31, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 6, 2018.

Jim Wells County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–18835 Filed 8–29–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1846]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository

address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
California:						
Solano	City of Fairfield (18–09–0734P).	The Honorable Harry T. Price, Mayor, City of Fairfield, City Hall, 1000 Webster Street, Fairfield, CA 94533.	Public Works Department, Engineering Division, 1000 Webster Street, Fairfield, CA 94533.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 20, 2018	060370
Solano	Unincorporated Areas of Solano County (18–09–0734P).	The Honorable Jim Spering, Chairman, Board of Supervisors, Solano County, 675 Texas Street, Suite 6500, Fairfield, CA 94533.	Solano County, Public Works Department, 675 Texas Street, Suite 5500, Fairfield, CA 94533.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 20, 2018	060631
Idaho:						
Ada	City of Meridian (18–10–0001P).	The Honorable Tammy de Weerd, Mayor, City of Meridian, Meridian City Hall, 33 East Broadway Avenue, Suite 300, Meridian, ID 83642.	Public Works Department, 33 East Broadway Avenue, Suite 200, Meridian, ID 83642.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 2, 2018	160180
Ada	Unincorporated Areas of Ada County (18–10–0001P).	The Honorable David L. Case, Chairman, Ada County Board of Commissioners, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 2, 2018	160001
Indiana:						
Lake	City of Hammond (18–05–0313P).	The Honorable Thomas M. McDermott, Jr., Mayor, City of Hammond, Hammond City Hall, 2nd Floor, 5925 Calumet Avenue, Hammond, IN 46320.	City Hall, 5925 Calumet Avenue, Hammond, IN 46320.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2018	180134
Lake	Town of Munster (18–05–0313P).	President, Lee Ann Mellon, Town of Munster, 1005 Ridge Road, Munster, IN 46321.	Town Hall, 1005 Ridge Road, Munster, IN 46321.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2018	180139
Kansas:						
Johnson	City of Olathe (18–07–0607P).	The Honorable Michael Copeland, Mayor, City of Olathe, 100 East Santa Fe Street, Olathe, KS 66061.	City Hall, Planning Office, 100 East Santa Fe Street, 3rd Floor, Olathe, KS 66061.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 26, 2018	200173
Nevada:						
Washoe	City of Sparks (18–09–0662P).	The Honorable Geno Martini, Mayor, City of Sparks, P.O. Box 857, Sparks, NV 89432.	City Hall, 431 Prater Way, Sparks, NV 89431.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 13, 2018	320021

[FR Doc. 2018–18828 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of October 19, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Butler County, Ohio and Incorporated Areas Docket Nos.: FEMA–B–1434 and FEMA–B–1634	
City of Fairfield	City Hall, 5350 Pleasant Avenue, Fairfield, OH 45014.
City of Hamilton	Department of Community Development, Planning Division, 345 High Street, Suite 370, Hamilton, OH 45011.
City of Middletown	City Hall, One Donham Plaza, Middletown, OH 45042.
City of Monroe	City Hall, 233 South Main Street, Monroe, OH 45050.
City of Oxford	City Hall, Building Department, 101 East High Street, Oxford, OH 45056.
City of Trenton	City Hall, 11 East State Street, Trenton, OH 45067.
Unincorporated Areas of Butler County.	Butler County Administrative Center, Building and Zoning Department, 130 High Street, 1st Floor, Hamilton, OH 45011.
Village of Millville	Village Hall, 2860 Ross Hanover Road, Millville, OH 45013.
Village of New Miami	Village Hall, 268 Whitaker Avenue, New Miami, OH 45011.
Village of Seven Mile	Village Hall, 201 High Street, Seven Mile, OH 45062.
Tuscarawas County, Ohio and Incorporated Areas Docket No.: FEMA–B–1704	
Unincorporated Areas of Tuscarawas County.	Tuscarawas County Administrative Offices, 125 East High Avenue, New Philadelphia, OH 44663.
Washington County, Oregon and Incorporated Areas Docket No.: FEMA–B–1710	
City of Beaverton	Community Development Department, 12725 Southwest Millikan Way, Beaverton, OR 97005.
City of Forest Grove	City Hall, 1924 Council Street, Forest Grove, OR 97116.
City of Hillsboro	Civic Center, 150 East Main Street, Hillsboro, OR 97123.
City of King City	City Hall, 15300 Southwest 116th Avenue, King City, OR 97224.
City of North Plains	City Hall, 31360 Northwest Commercial Street, North Plains, OR 97133.
City of Sherwood	City Hall, 22560 Southwest Pine Street, Sherwood, OR 97140.
City of Tigard	City Hall, 13125 Southwest Hall Boulevard, Tigard, OR 97223.
City of Tualatin	City Hall, 18880 Southwest Martinazzi Avenue, Tualatin, OR 97062.
Unincorporated Areas of Washington County.	County Public Services Building, 155 North First Avenue, Suite 350, Hillsboro, OR 97124.

[FR Doc. 2018–18832 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4379–DR; Docket ID FEMA–2018–0001]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–4379–DR), dated July 19, 2018, and related determinations.

DATES: The declaration was issued July 19, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 19, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from a severe winter storm and snowstorm during the period of March 13–14, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this major disaster:

Essex, Middlesex, Norfolk, Suffolk, and Worcester Counties for Public Assistance.

Essex, Middlesex, Norfolk, Suffolk, and Worcester Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period.

All areas within the Commonwealth of Massachusetts are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–18793 Filed 8–29–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the

final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama: Lee (FEMA Docket No.: B–1821).	City of Auburn (17–04–7132P).	The Honorable Bill Ham, Jr., Mayor, City of Auburn, 144 Tichenor Avenue, Suite 1, Auburn, AL 36830.	City Hall, 144 Tichenor Avenue, Suite 1, Auburn, AL 36830.	Jul. 2. 2018	010144
Colorado: Boulder (FEMA Docket No.: B–1821).	City of Louisville (18–08–0269X).	The Honorable Bob Muckle, Mayor, City of Louisville, 749 Main Street, Louisville, CO 80027.	City Hall, 749 Main Street, Louisville, CO 80027.	Jul. 5, 2018	085076
Florida:					
Charlotte (FEMA Docket No.: B–1821).	City of Punta Gorda (18–04–1510P).	The Honorable Rachel Keesling, Mayor, City of Punta Gorda, 326 West Marion Avenue, Punta Gorda, FL 33950.	City Hall, 326 West Marion Avenue, Punta Gorda, FL 33950.	Jun. 29, 2018	120062
Collier (FEMA Docket No.: B–1821).	Unincorporated areas of Collier County (18–04–1140P).	The Honorable Andy Solis, Chairman, Collier County Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Growth Management Department, 2800 North Horseshoe Drive, Naples, FL 34104.	Jul. 5, 2018	120067
Collier (FEMA Docket No.: B–1821).	Unincorporated areas of Collier County (18–04–1791P).	The Honorable Andy Solis, Chairman, Collier County Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Growth Management Department, 2800 North Horseshoe Drive, Naples, FL 34104.	Jul. 9, 2018	120067
Monroe (FEMA Docket No.: B–1821).	City of Key West (18–04–1325P).	The Honorable Craig Cates, Mayor, City of Key West, P.O. Box 1409, Key West, FL 33041.	Building Department, 1300 White Street, Key West, FL 33040.	Jul. 5, 2018	120168
Monroe (FEMA Docket No.: B–1821).	Village of Islamorada (18–04–1512P).	The Honorable Chris Sante, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Planning and Development Department, 86800 Overseas Highway, Islamorada, FL 33036.	Jul. 5, 2018	120424
Palm Beach (FEMA Docket No.: B–1821).	Village of Tequesta (18–04–1101P).	The Honorable Abby Brennan, Mayor, Village of Tequesta, 345 Tequesta Drive, Tequesta, FL 33469.	Building Department, 345 Tequesta Drive, Tequesta, FL 33469.	Jul. 2, 2018	120228
Pinellas (FEMA Docket No.: B–1821).	City of Clearwater (18–04–0067P).	The Honorable George N. Cretekos, Mayor, City of Clearwater, P.O. Box 4748, Clearwater, FL 33758.	Engineering Department, 100 South Myrtle Avenue, Suite 220, Clearwater, FL 33758.	Jul. 2, 2018	125096
New Hampshire: Hillsborough (FEMA Docket No.: B–1821).	City of Manchester (17–01–0477P).	The Honorable Theodore L. Gatsas, Mayor, City of Manchester, 1 City Hall Plaza, Manchester, NH 03101.	Planning and Community Development Department, 1 City Hall Plaza, Manchester, NH 03101.	Jun. 28, 2018	330169
Nevada: Clark (FEMA Docket No.: B–1821).	Unincorporated areas of Clark County (17–09–2685P).	The Honorable Steve Sisolak, Chairman, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Clark County Department of Public Works, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Jun. 29, 2018	320003
North Carolina:					
Mecklenburg (FEMA Docket No.: B–1829).	City of Charlotte (17–04–6164P).	The Honorable Vi Lyles, Mayor, City of Charlotte, 600 East 4th Street, Charlotte, NC 28202.	Charlotte-Mecklenburg Storm Water Services Department, 700 North Tryon Street, Charlotte, NC 28202.	Jun. 30, 2018	370159
Wake (FEMA Docket No.: B–1829).	Town of Apex (17–04–7005P).	The Honorable Lance Olive, Mayor, Town of Apex, P.O. Box 250, Apex, NC 27502.	Engineering Department, 73 Hunter Street, Apex, NC 27502.	Jul. 14, 2018	370467

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Pennsylvania:					
Dauphin (FEMA Docket No.: B–1821).	Township of Derry (17–03–2539P).	The Honorable Marc A. Moyer, Chairman, Township of Derry Board of Supervisors, 600 Clearwater Road, Hershey, PA 17033.	Community Development Department, 600 Clearwater Road, Hershey, PA 17033.	Jul. 6, 2018	420376
South Carolina:					
Berkley (FEMA Docket No.: B–1821).	Unincorporated areas of Berkley County (18–04–1462P).	The Honorable William W. Peagler, III, Berkley County Supervisor, P.O. Box 6122, Moncks Corner, SC 29461.	Berkeley County Planning and Zoning Department, 1003 Highway 52, Moncks Corner, SC 29461.	Jul. 5, 2018	450029
York (FEMA Docket No.: B–1821).	Town of Fort Mill (18–04–0146P).	The Honorable Guynn Savage, Mayor, Town of Fort Mill, P.O. Box 159, Fort Mill, SC 29716.	Town Hall, 200 Tom Hall Street, Fort Mill, SC 29715.	Jun. 27, 2018	450195
York (FEMA Docket No.: B–1821).	Unincorporated areas of York County (18–04–0146P).	The Honorable Britt Blackwell, Chairman, York County Council, P.O. Box 66, Rock Hill, SC 29745.	York County Planning and Development Department, 1070 Heckle Boulevard, Suite 107, Rock Hill, SC 29732.	Jun. 27, 2018	450193
South Dakota:					
Pennington (FEMA Docket No.: B–1821).	City of Rapid City (17–08–1343P).	The Honorable Steve Allender, Mayor, City of Rapid City, 300 6th Street, Rapid City, SD 57701.	Public Works Department, Engineering Services Division, 300 6th Street, Rapid City, SD 57701.	Jun. 29, 2018	465420
Texas:					
Bexar (FEMA Docket No.: B–1821).	City of Balcones Heights (17–06–0549P).	The Honorable Suzanne de Leon, Mayor, City of Balcones Heights, 3300 Hillcrest Drive, Balcones Heights, TX 78201.	Community Development Department, 3300 Hillcrest Drive, Balcones Heights, TX 78201.	Jul. 2, 2018	481094
Bexar (FEMA Docket No.: B–1821).	City of Kirby (17–06–3964P).	The Honorable Lisa B. Pierce, Mayor, City of Kirby, 112 Bauman Street, Kirby, TX 78219.	City Hall, 112 Bauman Street, Kirby, TX 78219.	Jun. 28, 2018	480041
Bexar (FEMA Docket No.: B–1821).	City of Leon Valley (17–06–2511P).	The Honorable Chris Riley, Mayor, City of Leon Valley, 6400 El Verde Road, Leon Valley, TX 78238.	Community Development Department, 6400 El Verde Road, Leon Valley, TX 78238.	Jul. 2, 2018	480042
Bexar (FEMA Docket No.: B–1821).	City of Leon Valley (17–06–2527P).	The Honorable Chris Riley, Mayor, City of Leon Valley, 6400 El Verde Road, Leon Valley, TX 78238.	Community Development Department, 6400 El Verde Road, Leon Valley, TX 78238.	Jul. 2, 2018	480042
Bexar (FEMA Docket No.: B–1821).	City of San Antonio (17–06–0549P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Jul. 2, 2018	480045
Bexar (FEMA Docket No.: B–1821).	City of San Antonio (17–06–2972P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Jul. 2, 2018	480045
Brazoria (FEMA Docket No.: B–1821).	City of Manvel (17–06–3110P).	The Honorable Debra Davison, Mayor, City of Manvel, 20025 Highway 6, Manvel, TX 77578.	City Hall, 20025 Highway 6, Manvel, TX 77578.	Jun. 29, 2018	480076
Brazoria (FEMA Docket No.: B–1821).	City of Pearland (17–06–3110P).	Mr. Clay Pearson, Manager, City of Pearland, 3519 Liberty Drive, Pearland, TX 77581.	City Hall, 3519 Liberty Drive, Pearland, TX 77581.	Jun. 29, 2018	480076
Brazoria (FEMA Docket No.: B–1821).	Unincorporated areas of Brazoria County (17–06–3110P).	The Honorable L.M. "Matt" Sebesta, Jr., Brazoria County Judge, 111 East Locust Street, Suite 102A, Angleton, TX 77515.	Brazoria County West Annex, 451 North Velasco, Suite 210, Angleton, TX 77515.	Jun. 29, 2018	485458
Lamar (FEMA Docket No.: B–1821).	City of Paris (17–06–3047P).	The Honorable Steve Clifford, Mayor, City of Paris, P.O. Box 9037, Paris, TX 75460.	Engineering, Planning and Development Department, 150 Southeast 1st Street, Paris, TX 75460.	Jul 3, 2018	480427

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Tarrant (FEMA Docket No.: B–1821).	City of Arlington (17–06–3146P).	The Honorable W. Jeff Williams, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76010.	City Hall, 101 West Abram Street, Arlington, TX 76010.	Jun. 29, 2018	485454
Tarrant (FEMA Docket No.: B–1821).	City of Grand Prairie (17–06–3146P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 75053.	City Hall, 206 West Church Street, Grand Prairie, TX 75050.	Jun. 29, 2018	485472
Williamson (FEMA Docket No.: B–1821).	City of Taylor (17–06–2515P).	The Honorable Brandt Rydell, Mayor, City of Taylor, 400 Porter Street, Taylor, TX 76574.	Department of Public Works, 400 Porter Street, Taylor, TX 76574.	Jun. 29, 2018	480670
Utah: Washington (FEMA Docket No.: B–1821).	City of Washington (17–08–1258P).	The Honorable Ken Neilson, Mayor, City of Washington, 111 North 100 East, Washington, UT 84780.	Public Works Department, 1305 East Washington Dam Road, Washington, UT 84780.	Jul. 9, 2018	490182
Virginia:					
Loudoun (FEMA Docket No.: B–1821).	Town of Leesburg (18–03–0635P).	The Honorable Kelly Burk, Mayor, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176.	Department of Plan Review, 25 West Market Street, Leesburg, VA 20176.	Jul. 6, 2018	510091
Prince William (FEMA Docket No.: B–1821).	Unincorporated areas of Prince William County (17–03–1826P).	Mr. Christopher E. Martino, Executive, Prince William County, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	Jun. 28, 2018	510119

[FR Doc. 2018–18831 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the

floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov*.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arkansas:					
Benton (FEMA Docket No.: B–1825).	City of Centerton (17–06–3374P).	The Honorable Bill Edwards, Mayor, City of Centerton, P.O. Box 208, Centerton, AR 72719.	City Hall, 290 Main Street, Centerton, AR 72719.	July 16. 2018	050399
Washington (FEMA Docket No.: B–1825).	City of Fayetteville (17–06–3037P).	The Honorable Lioneld Jordan, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	City Hall, 113 West Mountain Street, Fayetteville, AR 72701.	July 10. 2018	050216
Colorado:					
Jefferson (FEMA Docket No.: B–1825).	City of Arvada (17–08–0958P).	The Honorable Marc Williams, Mayor, City of Arvada, P.O. Box 8101, Arvada, CO 80001.	Engineering Department, 8101 Ralston Road, Arvada, CO 80001.	July 13, 2018	085072
Jefferson (FEMA Docket No.: B–1825).	Unincorporated areas of Jefferson County (17–08–0958P).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Golden, CO 80419.	July 13, 2018	080087
Jefferson (FEMA Docket No.: B–1829).	Unincorporated areas of Jefferson County (17–08–1483P).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Golden, CO 80419.	July 20, 2018	080087
Connecticut: Fairfield (FEMA Docket No.: B–1825).	Town of Darien (18–01–0005P).	The Honorable Jayme Stevenson, First Selectwoman, Town of Darien, Board of Selectmen, 2 Renshaw Road, Darien, CT 06820.	Planning and Zoning Department, 2 Renshaw Road, Darien, CT 06820.	July 9, 2018	090005
Florida:					
Alachua (FEMA Docket No.: B–1825).	Unincorporated areas of Alachua County (17–04–7240P).	The Honorable Lee Pinkoson, Chairman, Alachua County Board of Commissioners, 12 Southeast 1st Street, Gainesville, FL 32601.	Alachua County Public Works Department, 5620 Northwest 120th Lane, Gainesville, FL 32653.	July 23, 2018	120001
Charlotte (FEMA Docket No.: B–1825).	Unincorporated areas of Charlotte County (18–04–0611P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of, Commissioners, (18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, (18400 Murdock Circle, Port Charlotte, FL 33948.	July 12, 2018	120061
Monroe (FEMA Docket No.: B–1825).	Unincorporated areas of Monroe County (18–04–1687P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Marathon, FL 33050.	July 9, 2018	125129
Monroe (FEMA Docket No.: B–1825).	Village of Islamorada (18–04–1511P).	The Honorable Chris Sante, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Planning and Development, Department, 86800 Overseas Highway, Islamorada, FL 33036.	July 11, 2018	120424
Pinellas (FEMA Docket No.: B–1825).	City of Indian Rocks Beach (18–04–1507P).	Mr. Brently Gregg Mims, Manager, City of Indian Rocks Beach, 1507 Bay Palm Boulevard, Indian Rocks Beach, FL 33785.	Building Department 1507 Bay Palm Boulevard, Indian Rocks Beach, FL 33785.	July 23, 2018	125117
Hawaii: Hawaii (FEMA Docket No.: B–1825).	Unincorporated areas of Hawaii County (17–09–1285P).	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Suite 2603, Hilo, HI 96720.	Hawaii County Department of Public Works Engineer Division, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	July 12, 2018	155166
Mississippi: DeSoto (FEMA Docket No.: B–1825).	City of Olive Branch (17–04–5691P).	The Honorable Scott Phillips, Mayor, City of Olive Branch, 9200 Pigeon Roost Road, Olive Branch, MS 38654.	Development & Planning Department 9200 Pigeon Roost Road, Olive Branch, MS 38654.	July 13, 2018	280286
North Carolina:					
Stokes (FEMA Docket No.: B–1825).	Unincorporated areas of Stokes County (17–04–7748P).	The Honorable Ronnie Mendenhall Chairman, Stokes County Board of Commissioners, P.O. Box 20, Danbury, NC 27016.	Stokes County Planning and Inspection Department, 1014 Main Street, Danbury, NC 27016.	July 20, 2018	370362
Wake (FEMA Docket, No.: B–1829).	Unincorporated areas of Wake County 16–04–2584P).	The Honorable Jessica, Holmes, Chair, Wake County Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County Environmental Services Department, 336 Fayetteville Street, Raleigh, NC 27601.	July 6, 2018	370368
Oklahoma: Washington (FEMA Docket No.: B–1825).	City of Bartlesville (17–06–4218P).	The Honorable Dale Copeland, Mayor, City of Bartlesville, 401 South Johnstone Avenue, Bartlesville, OK 74003.	City Hall, 401 South Johnstone Avenue, Bartlesville, OK 74003.	July 12, 2018	400220
South Dakota:					
Charles Mix (FEMA Docket No.: B–1829).	City of Wagner (17–08–0710P).	The Honorable Donald R. Hosek, Mayor, City of Wagner, P.O. Box 40, Wagner, SD 57380.	City Hall, 60 South Main Avenue, Wagner, SD 57380.	July 19, 2018	460224

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Charles Mix (FEMA Docket No.: B–1829).	Yankton Sioux Tribe (17–08–0710P).	The Honorable Robert Flying Hawk, Chairman, Yankton Sioux Tribe, P.O. Box 1153, Wagner, SD 57380.	Yankton Sioux Tribal Hall, 806 Main Avenue Southwest, Wagner, SD 57380.	July 19, 2018	461204
Tennessee: Wilson (FEMA Docket No.: B–1825).	Unincorporated areas of Wilson County (18–04–1157P).	The Honorable Randall Hutto, Mayor, Wilson County, 228 East Main Street, Room 104, Lebanon, TN 37087.	Wilson County Courthouse, 228 East Main Street, Room 5, Lebanon, TN 37087.	July 11, 2018	470207
Texas:					
Dallas (FEMA Docket No.: B–1825).	City of Rowlett (17–06–2228P).	The Honorable Tammy Dana-Bashian, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	Community Development Building, 3901 Main Street, Rowlett, TX 75088.	July 20, 2018	480185
Hays (FEMA Docket No.: B–1825).	City of Kyle (17–06–4216P).	The Honorable Travis Mitchell, Mayor, City of Kyle, P.O. Box 40, Kyle, TX 78640.	Stormwater Program and Storm Drainage and Flood Risk Mitigation Utility, 100 West Center Street, Kyle, TX 78640.	July 12, 2018	481108
Kaufman (FEMA Docket No.: B–1825).	City of Terrell (17–06–3844P).	The Honorable D.J. Ory, Mayor, City of Terrell, P.O. Box 310, Terrell, TX 75160.	Engineering Department, 201 East Nash Street, Terrell, TX 75160.	July 13, 2018	480416
Kaufman (FEMA Docket No.: B–1825).	Unincorporated areas of Kaufman County (17–06–3844P).	The Honorable Bruce Wood, Kaufman County Judge, 100 West Mulberry Street, Kaufman, TX 75142.	Kaufman County Public Works Department, 3003 South Washington Street, Kaufman, TX 75142.	July 13, 2018	480411
Tarrant (FEMA Docket No.: B–1825).	City of Fort Worth (17–06–4075P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	July 16, 2018	480596
Tarrant (FEMA Docket No.: B–1829).	City of Fort Worth (17–06–4077P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	July 13, 2018	480596
Tarrant (FEMA Docket No.: B–1825).	City of Fort Worth (17–06–4082P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	July 16, 2018	480596
Tarrant (FEMA Docket No.: B–1829).	Town of Edgecliff Village (17–06–4077P).	The Honorable Dennis ''Mickey'' Rigney, Mayor, Town of Edgecliff Village, 1605 Edgecliff Road, Edgecliff Village, TX 76134.	Town Hall, 1605 Edgecliff Road, Edgecliff Village, TX 76134.	July 13, 2018	480592
Williamson (FEMA Docket No.: B–1825).	Unincorporated areas of Williamson County (17–06–2076P).	The Honorable Dan A. Gattis, Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Engineering Department, 3151 South East Inner Loop, Suite B, Georgetown, TX 78626.	July 12, 2018	481079
Utah: Grand (FEMA Docket No.: B–1825).	Unincorporated areas of Grand County (17–08–1595P).	The Honorable Mary McGann, Chair, Grand County Council, 125 East Center Street, Moab, UT 84532.	Grand County Courthouse, 125 East Center Street, Moab, UT 84532.	July 20, 2018	490232
Virginia:					
Prince William (FEMA Docket No.: B–1829).	Unincorporated areas of Prince William County (17–03–1825P).	Mr. Christopher E. Martino, Prince William County Executive, 1 County Complex Court, Woodbridge, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Woodbridge, VA 22192.	July 12, 2018	510119
Prince William (FEMA Docket No.: B–1825).	Unincorporated areas of Prince William County (17–03–1866P).	Mr. Christopher E. Martino, Prince William County Executive, 1 County Complex Court, Woodbridge, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Woodbridge, VA 22192.	July 12, 2018	510119

[FR Doc. 2018–18795 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4381–DR; Docket ID FEMA–2018–0001]

Michigan; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–4381–DR), dated August 2, 2018, and related determinations.

DATES: The declaration was issued August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 2, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Michigan resulting from severe storms, flooding, landslides, and mudslides during the period from June 16 to June 18, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as

you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David G. Samaniego, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Michigan have been designated as adversely affected by this major disaster:

Gogebic, Houghton, and Menominee Counties for Public Assistance.

All areas within the State of Michigan are eligible for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–18794 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4382–DR; Docket ID FEMA–2018–0001]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–4382–DR), dated August 4, 2018, and related determinations.

DATES: The declaration was issued August 4, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 4, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of California resulting from wildfires and high winds beginning on July 23, 2018, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William Roche, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

Shasta County for Individual Assistance.

Shasta County for Public Assistance.

All areas within the State of California are eligible for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–18838 Filed 8–29–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4380–DR; Docket ID FEMA–2018–0001]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont

(FEMA–4380–DR), dated July 30, 2018, and related determinations.

DATES: The declaration was issued July 30, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 30, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from a severe storm and flooding during the period of May 4 to May 5, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Chittenden, Grand Isle, Lamoille, Orange, and Orleans Counties for Public Assistance.

All areas within the State of Vermont are eligible for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–18836 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4382–DR; Docket ID FEMA–2018–0001]

California; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4382–DR), dated August 4, 2018, and related determinations.

DATES: This amendment was issued August 17, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 4, 2018.

Lake County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–18837 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0048]

Homeland Security Advisory Council

AGENCY: The Department of Homeland Security (DHS), The Office of Partnership and Engagement.

ACTION: Notice of partially closed Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (''HSAC'' or ''Council'') will meet in person on Tuesday, September 18, 2018. Members of the public may participate in person. The meeting will be partially closed to the public.

DATES: The Council will meet September 18, 2018, from 9:15 a.m. to 2:30 p.m. EDT. The meeting will be open to the public from 1:30 p.m. to 2:30 p.m. EDT. Please note the meeting may close early if the Council has completed its business. The meeting will be closed to the public from 9:15 a.m. to 1:20 p.m. EDT.

ADDRESSES: The public meeting will be held in Town Hall (1) at the Transportation Security Administration (TSA), 601 S 12th Street (East Building), in Arlington, VA 20598. Members of the public will meet at the entrance of the East Building. For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Mike Miron at *HSAC@hq.dhs.gov* or (202) 447–3135 as soon as possible. Written public comments prior to the meeting must be received by 5:00 p.m. EDT on Monday, September 14, 2018, and must be identified by Docket No. DHS–2018–0048. Written public comments after the meeting must be identified by Docket No. DHS–2018–0048 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: HSAC@hq.dhs.gov.* Include Docket No. DHS–2018–0048 in the subject line of the message.

• *Fax:* (202) 282–9207. Include Mike Miron and the Docket No. DHS–2018–0048 in the subject line of the message.

• *Mail:* Homeland Security Advisory Council, Attention Mike Miron, Department of Homeland Security, Mailstop 0445, 245 Murray Lane SW, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2018–0048,'' the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2018–0048,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Mike Miron at *HSAC@hq.dhs.gov* or at (202) 447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. Appendix), which requires each FACA committee meeting to be open to the public.

The Council provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, Federal, State, and local government, the private sector, and academia.

The Council will meet in an open session between 1:30 p.m. to 2:30 p.m. EDT. The Council will swear in new members, and receive new taskings.

The Council will meet in a closed session from 9:15 a.m. to 1:20 p.m. EDT to receive sensitive operational information from senior officials on current counterterrorism threats, border security, TSA, and election cybersecurity.

Basis for Partial Closure: In accordance with Section 10(d) of FACA, the Secretary of Homeland Security has determined this meeting requires partial closure. The disclosure of the information relayed would be detrimental to the public interest for the following reasons:

The Council will receive closed session briefings at the For Official Use Only and Law Enforcement sensitive information from senior officials. These briefings will concern matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(7)(E) and 552b(c)(9)(B). The Council will receive operational counterterrorism updates on the current threat environment and security measures associated with countering such threats, including those related to aviation security programs, border security, immigration enforcement, and election cybersecurity.

The session is closed under 5 U.S.C. 552b(c)(7)(E) because disclosure of that information could reveal investigative techniques and procedures not generally available to the public, allowing terrorists and those with interests against the United States to circumvent the law and thwart the Department's strategic initiatives. Specifically, there will be material presented during the briefings regarding the latest viable threats against the United States and how DHS and other Federal agencies plan to address those threats. Disclosure of this information could frustrate the successful implementation of protective measures designed to keep our country safe. In addition, the session is closed pursuant to 5 U.S.C. 552b(c)(9)(B) because disclosure of these techniques and procedures could frustrate the successful implementation of protective measures designed to keep our country safe.

Participation: Members of the public will have until 5:00 p.m. EDT on Friday, September 14, 2018, to register to attend the Council meeting on Tuesday, September 18, 2018. Due to limited availability of seating, admittance will be on a first-come first-serve basis. Participants interested in attending the meeting can contact Mike Miron at *HSAC@hq.dhs.gov* or (202) 447–3135. You are required to provide your full legal name, date of birth, and company/agency affiliation. The public may access the facility via public transportation or use the public parking garages located near the Fashion Centre at Pentagon City. Members of the public will meet at 1:00 p.m. EDT at TSA Headquarters main entrance for sign in and escorting to the meeting room for the public session. Late arrivals after 1:20 p.m. EDT will not be permitted access to the facility.

Facility Access: You are required to present a valid original government issued ID, to include a State Driver's License or Non-Driver's Identification Card, U.S. Government Common Access Card (CAC), Military Identification Card or Person Identification Verification Card; U.S. Passport, U.S. Border Crossing Card, Permanent Resident Card or Alien Registration Card; or Native American Tribal Document.

Dated: August 27, 2018.

Michael McKeown,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2018–18898 Filed 8–29–18; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0091]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Replacement Naturalization/Citizenship Document

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until October 29, 2018.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0091 in the body of the letter, the agency name and Docket ID USCIS–2006–0052. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0052;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20

Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

This information collection notice was previously published in the **Federal Register** for 60-day public comment period on January 31, 2018, at 83 FR 4504, allowing for a 60-day public comment period. A 30-day notice was published on June 26, 2018 at 83 FR 29811. USCIS is publishing a second Notice for 60-day public comment period to allow for comments on additional changes to the form and instructions.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0052 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a Currently Approved Collection.

(2) *Title of the form/collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–565; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The form is provided by U.S. Citizenship and Immigration Services (USCIS) to determine the applicant's eligibility for a replacement document. An applicant may file for a replacement if he or she was issued one of the documents described above and it was lost, mutilated, or destroyed; if the document is incorrect due to a typographical or clerical error by USCIS; if the applicant's name was changed by a marriage or by court order after the document was issued and the applicant now seeks a document in the new name; or if the applicant is seeking a change of the gender listed on their document after obtaining a court order, a U.S. Government-issued document, or a letter from a licensed health care professional recognizing that the applicant's gender is different from that listed on their current document. The only document that can be replaced on the basis of a change to the applicant's date of birth, as evidenced by a court order or a U.S. Government-issued document is the Certificate of Citizenship. If the applicant is a naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign country, he or she may apply for a special certificate for that purpose.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–565 is 27,690 and the estimated hour burden per response is 1.33 hours; the estimated total number of respondents for the information collection Biometrics is 27,690 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 69,225 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,392,025.

Dated: August 24, 2018.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–18800 Filed 8–29–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0009]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for Nonimmigrant Worker

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until October 29, 2018.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0009 in the body of the letter, the

agency name and Docket ID USCIS–2005–0030. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2005–0030;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2005–0030 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the form/collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129 is 530,457 and the estimated hour burden per response is 2.34 hours; the estimated total number of respondents for the information collection E–1/E–2 Classification Supplement to Form I–129 is 4,410 and the estimated hour burden per response is 0.67 hours; the estimated total number of respondents for the information collection Trade Agreement Supplement to Form I–129 is 7,817 and the estimated hour burden per response is 0.67 hours; the estimated total number of respondents for the information collection H Classification Supplement to Form I–129 is 422,130 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection H–1B and H–1B1 Data Collection and Filing Fee Exemption Supplement is 403,153 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the information collection L Classification Supplement to Form I–129 is 44,182 and the estimated hour burden per response is 1.34 hours; the estimated total number of respondents for the information collection O and P Classifications Supplement to Form I–129 is 35,999 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the information collection Q–1 Classification Supplement to Form I–129 is 183 and the estimated hour burden per response is 0.34 hours; the estimated total number of respondents for the information collection R–1 Classification Supplement to Form I–129 is 8,366 and the estimated hour burden per response is 2.34 hours; the estimated total number of respondents for the information collection Biometrics is 142 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,611,882.15 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $86,668,611.

Dated: August 24, 2018

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–18799 Filed 8–29–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2018–N078; FXES11130200000–189–FF02ENEH00]

Draft Safe Harbor Agreement Amendment and Application for an Enhancement of Survival Permit for the Rio Salado Project, in Tempe, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receiving the City of Tempe's survival enhancement permit application, under the Endangered Species Act. The requested amended permit would allow for the City of Tempe to conduct, to a greater degree, adaptive biological monitoring and would authorize incidental take of the yellow-billed cuckoo as a result of operation and maintenance activities associated with the Rio Salado Project, in the City of Tempe (Tempe Reach), Maricopa County, AZ. In accordance with National Environmental Policy Act (NEPA) requirements, we have determined that the proposed action qualifies under a categorical exclusion. We are accepting comments on the draft safe harbor agreement amendment (Draft SHA Amendment), and draft NEPA screening form supporting the use of a categorical exclusion.

DATES: *Submission of Comments:* We will accept comments received or postmarked on or before October 1, 2018.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents at *https://www.fws.gov/southwest/es/arizona/.* Alternatively, you may obtain CD–ROMs with electronic copies of the documents by writing to the Acting Field Supervisor, U.S. Fish and Wildlife Service, 9828 North 31st Avenue, Phoenix, AZ 85051–2517; calling (602) 242–0210; faxing (602) 242–2513, as well as by email. A limited number of printed copies of the documents are also available, by request, from the Acting Field Supervisor. Copies of the documents are also available for public inspection and review, by appointment only, at the Service's Phoenix office (above) or at U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 6093, Albuquerque, NM 87102.

Submitting Comments: To submit written comments, please use one of the following methods, and note that your comment is in reference to the Draft SHA Amendment and Application for an Enhancement of Survival Permit for the Rio Salado, Tempe, AZ.

- *U.S. Mail:* Brenda Smith, Acting Field Supervisor, Phoenix office (address above).
- *Fax:* (602) 242–2513.
- *Email: FW2_HCP_Permits@fws.gov.*

We request that you submit comments only by the methods described above. Generally, we will post any personal information you provide us (see Public Availability of Comments for more information).

FOR FURTHER INFORMATION CONTACT: Brenda Smith, Acting Field Supervisor, (602) 242–0210 (telephone).

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce receiving the City of Tempe's application to amend an existing enhancement of survival permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested amended permit would allow for the City of Tempe to conduct, to a greater degree, adaptive biological monitoring (annual monitoring until 2020, and then at least every 3 years after), and would authorize incidental take of the yellow-billed cuckoo as a result of operation and maintenance activities associated with the Rio Salado Project, Tempe Reach (approximately from McClintock Drive to Priest Drive, excluding Tempe Town Lake within the Salt River floodplain). The amended permit would expire on May 1, 2058, to coincide with the expiration date of the original permit (50 years after the issuing date of May 1, 2008). We invite the public to review and comment on the Draft SHA Amendment and draft NEPA screening form supporting the use of a categorical exclusion in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*).

The applicant plans to conduct operation and maintenance activities associated with the Rio Salado Project, Tempe Reach, including maintenance of vegetation, roads, trails, water delivery system, flood control capacity, and storm water facilities. Initial implementation of the Rio Salado Project, Tempe Reach, was a cooperative project between the Applicant and the U.S. Army Corps of Engineers to restore, enhance, and maintain 159 acres of native riparian and wetland vegetation along the lower Salt River in Maricopa County, Arizona.

Background

Enhancement of survival permits issued for safe harbor agreements encourage non-Federal landowners, including non-Federal operators holding easements on private lands, to implement conservation measures for habitat that is, or is likely to develop into, suitable habitat for listed species, by assuring landowners/operators that they will not be subjected to increased property use restrictions if suitable habitat develops and the covered species is detected in the future. Application requirements and enhancement of survival permit issuance criteria for safe harbor agreements are provided under section 10(c) of the ESA and its implementing regulations from the Code of Federal Regulations (CFR) at 50 CFR 17.22, and the NEPA and its implementing regulations at 40 CFR 1506.6.

Proposed Action

The proposed action is the Service's issuance of a permit for covered activities in the permit area for up to 50 years, pursuant to section 10(a)(1)(A) of the ESA. The permit would cover ''take'' of the yellow-billed cuckoo associated with covered activities occurring within the permit area.

The Draft SHA Amendment commits the City of Tempe to implement conservation measures to improve habitat for the covered species on Rio Salado lands uses while allowing for covered activities within the project area to continue.

To meet section 10(a)(1)(A) permit requirements, the applicant developed and proposes to implement the SHA and SHA Amendment, which describe the actions the City of Tempe has agreed to undertake to improve habitat within the Rio Salado Project, Tempe Reach, area.

Expected benefits include, but may not be limited to: Improvement of riparian habitat which can be used by both covered species and other native fauna, limiting the amount of new disturbance to riparian habitat, and improving environmental exposure to the public.

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the SHA Amendment. We will fully consider all comments we receive during the public comment period, and we will not make our final decision until after the comment period ends.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. 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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA and ESA implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and it's implementing regulations (40 CFR 1506.6).

Dated: August 20, 2018.

James Broska,

Acting Deputy Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2018–18809 Filed 8–29–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2018–N081; FXES11140800000–178–FF08ECAR00]

Habitat Conservation Plan for the Least Bell's Vireo; Categorical Exclusion for Chandler's Sand and Gravel Project, Orange, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Chandler's Sand and Gravel, LLC for a 10-year incidental take permit for the endangered least Bell's vireo pursuant to the Endangered Species Act, as amended. We are requesting comments on the permit application and on our preliminary determination that the applicant's accompanying proposed habitat conservation plan (HCP) qualifies as low effect, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in our environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before October 1, 2018.

ADDRESSES:

Submitting Comments: You may submit comments by one of the following methods. Please include ''OC Mine HCP'' at the beginning of your comments.

- *U.S. Mail:* Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760–431–9624.
- *Email: fw8cfwocomments@fws.gov.*

Obtaining Documents: You may obtain copies of the documents by the following methods:

- *Internet: https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html.*
- *Telephone:* 760–431–9440.
- *U.S. Mail:* Carlsbad Fish and Wildlife Office (address above).
- *In-Person:* You may examine the documents by appointment during regular business hours at the Carlsbad Fish and Wildlife Office (address above). Please call to make an appointment (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Chandler's Sand and Gravel, LLC (applicant) for a 10-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the anticipated ''take'' of the endangered least Bell's vireo (*Vireo bellii pusillus;* vireo) associated with regrading a 14-acre property and filling an abandoned pit mine on site in the City of Orange, Orange County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the applicant's proposed habitat conservation plan (HCP).

We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The basis for this determination is discussed in our EAS and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. ''Take'' is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct'' (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed species. ''Incidental taking'' is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The project is located on a 14-acre property in the City of Orange in Orange County, California. The applicant requests a 10-year permit under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking vireo as a result of permanent impacts to 2.0 acres of riparian woodland that the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's activities associated with the regrading of the property and filling the abandoned pit mine on site.

The applicant proposes to mitigate permanent impacts to 2.0 acres of occupied vireo habitat through the creation of 1.48 acres and enhancement of 1.88 acres of vireo habitat on site and enhancement of 2.53 acres of vireo habitat off site. All of the created and enhanced habitat will be conserved and managed in perpetuity.

The applicant's proposed HCP also contains measures to minimize the effects of construction activities on the vireo, including the following:

Oversight of project activities by a biological monitor; fencing the project limits; removing vegetation outside the vireo nesting season; implementing a Storm Water Pollution Prevention Plan to avoid and minimize erosion, sedimentation, and pollution in adjacent native habitat; removing invasive plant species from the project work area; minimizing the use of project lighting; storing and removing trash; controlling dust; ensuring that fire suppression equipment at all times; and monitoring and reporting to the Service upon project completion.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the vireo. If we approve the permit, take of vireo would be authorized for the applicant's activities associated with the implementation of the OC Reclamation Mine project. In the proposed HCP, the applicant considers the No Action Alternative. Under the No Action Alternative, no incidental take of least Bell's vireo resulting from habitat modification would occur, and no long-term protection and management would be afforded to the species. The No Action Alternative would not meet the primary goal of the proposed Project, which is serve as a receiver site for excess fill and to fill the abandoned pit mine. Because the abandoned pit mine contains the habitat supporting the vireo, it is not possible to implement the project and avoid incidental take of vireo.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the HCP and issuance of an incidental take permit qualify for categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a low-effect plan as defined by the Habitat Conservation Planning Handbook (December 2016).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

(1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and

(3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the ESA by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of vireo.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

G. Mendel Stewart,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2018–18908 Filed 8–29–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[189D0102DM DLSN00000.000000 DS61200000 DX61201; OMB Control Number 1090–0011]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; DOI Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Secretary are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 1, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference OMB Control Number 1090–0011 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 22, 2018 (83 FR 12590). No comments were received.

We are again soliciting comments on the proposed ICR that is described

below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Office of the Secretary; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Office of the Secretary enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Office of the Secretary minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Title of Collection: DOI Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1090–0011.

Form Number: DI–4010.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals/households; businesses; and, State, local, and Tribal governments.

Total Estimated Number of Annual Respondents: 78,750 for surveys, 4,250 for comment cards, 3,750 for focus groups.

Total Estimated Number of Annual Responses: 78,750 for surveys, 4,250 for comment cards, 3,750 for focus groups.

Estimated Completion Time per Response: 15 minutes for surveys, 2 minutes for comment cards, 2 hours for focus groups.

Total Estimated Number of Annual Burden Hours: 28,605 Hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–18843 Filed 8–29–18; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[189D0102DM DLSN00000.000000 DS61200000 DX61201; OMB Control Number 1040–0001]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; DOI Programmatic Clearance for Customer Satisfaction Surveys

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Secretary are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 1, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference OMB Control Number 1040–0001 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We published a **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information on March 22, 2018 (83 FR 12590). In that notice, we solicited comments for 60 days, ending on May 21, 2018. We received no comments in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Office of the Secretary; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Office of the Secretary enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Office of the Secretary minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Government Performance and Results Act of 1993 (GPRA) (Pub. L. 103–62) requires agencies to ''improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.'' To fulfill this responsibility, DOI bureaus and offices must collect data from their respective user groups to better understand the needs and desires of the public and to respond accordingly. Executive Order 12862 ''Setting Customer Service Standards'' also requires all executive departments to ''survey customers to determine . . . their level of satisfaction with existing services.'' We use customer satisfaction surveys to help us fulfill our responsibilities to provide excellence in government by proactively consulting with those we serve. This programmatic clearance provides an expedited approval process for DOI bureaus and offices to conduct customer research through external surveys such as questionnaires and comment cards.

The proposed renewal covers all of the organizational units and bureaus in DOI. Information obtained from customers by bureaus and offices will be provided voluntarily. No one survey will cover all the topic areas; rather, these topic areas serve as a guide within which the bureaus and offices will develop questions. Questions may be asked in languages other than English (*e.g.,* Spanish) where appropriate. Topic areas include:

(1) Delivery, quality and value of products, information, and services. Respondents may be asked for feedback regarding the following attributes of the information, service, and products provided:

(a) Timeliness.
(b) Consistency.
(c) Accuracy.
(d) Ease of Use and Usefulness.
(e) Ease of Information Access.
(f) Helpfulness.
(g) Quality.
(h) Value for fee paid for information/product/service.

(2) Management practices. This area covers questions relating to how well customers are satisfied with DOI management practices and processes, what improvements they might make to specific processes, and whether or not they feel specific issues were addressed and reconciled in a timely, courteous, and responsive manner.

(3) Mission management. We will ask customers to provide satisfaction data related to DOI's ability to protect, conserve, provide access to, provide scientific data about, and preserve natural, cultural, and recreational resources that we manage, and how well we are carrying out our trust responsibilities to American Indians.

(4) Rules, regulations, policies. This area focuses on obtaining feedback from customers regarding fairness, adequacy, and consistency in enforcing rules, regulations, and policies for which DOI is responsible. It will also help us understand public awareness of rules and regulations and whether or not they are explained in a clear and understandable manner.

(5) Interactions with DOI Personnel and Contractors. Questions will range from timeliness and quality of interactions to skill level of staff providing the assistance, as well as their courtesy and responsiveness during the interaction.

(6) General demographics. Some general demographics may be gathered to augment satisfaction questions so that we can better understand the customer and improve how we serve that customer. We may ask customers how many times they have used a service, visited a facility within a specific timeframe, their ethnic group, or their race.

All requests to collect information under the auspices of this proposed renewal will be carefully evaluated to ensure consistency with the intent, requirements, and boundaries of this programmatic clearance. Interior's Office of Policy Analysis will conduct an administrative and technical review of each specific request in order to ensure statistical validity and soundness. All information collections are required to be designed and deployed based upon acceptable statistical practices and sampling methodologies, and procedures that account for and minimize non-response bias, in order to obtain consistent, valid data and statistics that are representative of the target populations.

Title of Collection: DOI Programmatic Clearance for Customer Satisfaction Surveys.

OMB Control Number: 1040–0001.

Form Number: DI–4010.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: DOI customers. We define customers as anyone who uses DOI resources, products, or services. This includes internal customers (anyone within DOI) as well as external customers (*e.g.,* the American public, representatives of the private sector, academia, other government agencies). Depending upon their role in specific situations and interactions, citizens and DOI stakeholders and partners may also be considered customers. We define stakeholders to mean groups or individuals who have an expressed interest in and who seek to influence the present and future state of DOI's resources, products, and services. Partners are those groups, individuals, and agencies who are formally engaged in helping DOI accomplish its mission.

Total Estimated Number of Annual Respondents: 100,000. We estimate approximately 50,000 respondents will submit DOI customer satisfaction surveys and 50,000 will submit comment cards.

Total Estimated Number of Annual Responses: 100,000.

Estimated Completion Time per Response: 15 minutes for a customer survey; 3 minutes for a comment card.

Total Estimated Number of Annual Burden Hours: 15,000.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–18839 Filed 8–29–18; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17XL1109AF LLUT98300 L10400000.PH0000 241A]

Notice of Establishment and Call for Nominations for the Bears Ears National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is publishing this Notice in accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act (FACA). The BLM gives notice that the Secretary of the Interior is establishing the Bears Ears National Monument Advisory Committee (BENM–MAC). This Notice is also seeking nominations for individuals to be considered as BENM–MAC members.

DATES: A completed nomination form and accompanying nomination/recommendation letters must be received by October 1, 2018.

ADDRESSES: Send Nominations to Lance Porter, BLM Canyon Country District Manager, 82 Dogwood Avenue, Moab, Utah 84532, Attention: BENM–MAC Nominations.

FOR FURTHER INFORMATION CONTACT: Contact Lisa Bryant, Public Affairs Officer, Canyon Country District, 82 Dogwood Avenue, Moab, Utah 84532; phone (435) 259–2187, or email: *lmbryant@blm.gov.*

SUPPLEMENTARY INFORMATION: The FLPMA (43 U.S.C. 1739) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary of the Interior to establish 10-to-15-member citizen-based advisory councils that are regulated by FACA (5 U.S.C. Appendix 2). The BLM rules governing advisory committees are found at 43 CFR subpart 1784.

The BENM–MAC will provide information and advice regarding the development of the Management Plan and, as appropriate, management of the Monument to the Secretary of the Interior, through the Director of the BLM, and the Secretary of Agriculture through the Chief of the U.S. Forest Service (FS). Committee duties and responsibilities are solely advisory in nature.

The BENM–MAC will consist of 15 members to be appointed by the Secretary of the Interior and the Secretary of Agriculture as follows:

(1) An elected official from San Juan County representing the County;

(2) A representative of State government;

(3) A representative with paleontological expertise;

(4) A representative with archaeological or historic expertise;

(5) A representative of the conservation community;

(6) A representative of livestock grazing permittees within the Monument;

(7) Two representatives of Tribal interests;

(8) Two representatives of developed outdoor recreation, off-highway vehicle users, or commercial recreation activities, including for example, commercial/charter or recreation fishing;

(9) A representative of dispersed recreational activities, including, for example, hunting and shooting sports;

(10) A representative of private landowners;

(11) A representative of local business owners; and,

(12) Two representatives of the public at large, including, for example, sportsmen and sportswomen communities.

Members will be appointed to staggered 3-year terms.

Nominating Potential Members: Nomination forms may be obtained from the Canyon Country District Office, (address listed above) or *https://www.blm.gov/sites/blm.gov/files/GetInvolved_RACApplication.pdf.* All nominations must include a completed Resource Advisory Council application (OMB Control No. 1004–0204), letters of reference from the represented interests or organizations, and any other information that speaks to the candidate's qualifications.

The specific category the nominee would be representing should be identified in the letter of nomination and in the application form.

Members of the BENM–MAC serve without compensation. However, while away from their homes or regular places of business, BENM–MAC and subcommittee members engaged in BENM–MAC or subcommittee business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, in the same manner as persons employed intermittently in Federal Government service.

The BENM–MAC will meet approximately two to four times annually, and at such other times as designated by the DFO.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be 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.

Certification Statement: I hereby certify that the Bears Ears National Monument Advisory Committee is necessary and is in the public interest in connection with the performance of duties pursuant to the Department of the Interior's authority under Presidential Proclamation 9558, ''Establishment of the Bears Ears National Monument'' and Presidential Proclamation 9681, ''Modifying the Bear Ears National Monument.''

Authority: 43 CFR 1784.4–1.

Ryan K. Zinke,

Secretary of the Interior.

[FR Doc. 2018–18825 Filed 8–29–18; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–592 and 731–TA–1400 (Final)]

Plastic Decorative Ribbon From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–592 and 731–TA–1400 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of plastic decorative ribbon

from China, provided for in subheadings 3920.10.00, 3920.20.00, 3920.30.00, 3920.43.50, 3920.49.00, 3920.62.00, 3920.69.00, 3921.90.11, 3921.90.15, 3921.90.19, 3921.90.40, 3926.90.99, 5404.90.00, 9505.90.40, 4601.99.90, 4602.90.00, 5609.00.30, 5609.00.40, and 6307.90.98 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less than fair value.

DATES: August 8, 2018.

FOR FURTHER INFORMATION CONTACT: Calvin Chang (202–205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Scope.*—For purposes of these investigations, Commerce has defined the subject merchandise as certain plastic decorative ribbon having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches in actual measurement, including but not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word ''ribbon'' used in the singular includes the plural and the plural ''ribbons'' includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to these investigations may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes ''pull-bows'' an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and ''pre-notched'' bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of these investigations; the ''other products'' (*i.e.,* the other, non-subject merchandise included in the ensemble) are not covered by the scope of these investigations.

Excluded from the scope of these investigations are the following: (1) Ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) An outer layer that is either flocked or made of fabric, and (b) a flexible metal wire at the base which permits attachment to an object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non subject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; and (9) ribbons in the form of bows having a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

The scope of these investigations is not intended to include shredded plastic film or shredded plastic strip, in each case where the shred does not exceed 5 mm in width and does not exceed 18 inches in length, imported in bags.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the People's Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008).

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the

meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of plastic decorative ribbon, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on December 27, 2017, by Berwick Offray, LLC, Berwick, Pennsylvania.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 29, 2018, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Thursday, December 13, 2018, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 10, 2018. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on December 7, 2018, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 6, 2018. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 26, 2018. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petitions, on or before December 26, 2018. On January 15, 2019, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 17, 2019, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's website at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 24, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–18797 Filed 8–29–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–18–040]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 7, 2018 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. No. 731–TA–344 (Fourth Review) (Tapered Roller Bearings from China). The Commission is currently scheduled to complete and file its determination and views of the Commission by September 24, 2018.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not

disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: August 28, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–18987 Filed 8–28–18; 4:15 pm]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings on Proposed Amendments to the Appellate, Bankruptcy, Civil, and Evidence Rules; Correction

AGENCY: Advisory Committees on the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Federal Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of proposed amendments and open hearings; correction.

SUMMARY: The Advisory Committees on Appellate, Bankruptcy, Civil, and Evidence Rules published a document in the **Federal Register** on August 9, 2018, concerning the proposed amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Federal Rules of Evidence. The document contained an incorrect date for the Bankruptcy Rules public hearings scheduled on the proposed amendments.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–240, Washington, DC 20544, Telephone (202) 502–1820.

Correction: In the **Federal Register** of August 9, 2018, in FR Doc. 2018–17092, on page 39463, in the second column, correct the public hearings scheduled on the proposed amendments to the Bankruptcy Rules to read:

- Bankruptcy Rules in Washington, DC on January 10, 2019, and in Kansas City, Missouri, on January 24, 2019;

Dated: August 24, 2018.

Rebecca A. Womeldorf,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2018–18851 Filed 8–29–18; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

On August 17, 2018, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Maryland in the lawsuit entitled *United States of America* v. *Honeywell International, Inc., and Mack Trucks, Inc.,* Civil Action No. 1:18–cv–02528.

The United States seeks reimbursement of response costs incurred under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') for response actions at or in connection with the release or threatened release of hazardous substances at the Elkton Farm Firehole Site in Elkton, Maryland (the ''Site''). The United States also seeks a declaration of Settling Defendants' Honeywell International, Inc., and Mack Trucks, Inc. liability, pursuant to Section 113(g) of CERCLA for all future response costs to be incurred by the United States in connection with the Site.

The proposed consent decree requires Settling Defendants to pay $5,500,000 and Settling Federal Agencies, the United States, on behalf of the Army, Navy and Department of Defense, to pay $6,250,000 for past response costs, respectively. The proposed consent decree will resolve all CERCLA claims alleged in this action by the United States against Settling Defendants and any potential liability within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), for Settling Federal Agencies.

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, Environmental Enforcement Section, and should refer to *United States* v. *Honeywell International, Inc., and Mack Trucks, Inc.,* D.J. Ref. No. 90–11–3–08918/1. 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.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611.

Please enclose a check or money order for $6.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–18818 Filed 8–29–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Form ETA–9142–B–CAA–2

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: 60-Day Notice. Comment Request for Information Collection for Form ETA–9142–B–CAA–2, *Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 205 of Division M of the Consolidated Appropriations Act, 2018 Public Law 115–141* (March 23, 2018) (OMB Control Number 1205–0531), Revision of Currently Approved Collection.

SUMMARY: The Department of Labor (DOL or Department), as part of its effort to streamline information collection, clarify statutory and regulatory requirements, and provide greater transparency and oversight in the H–2B nonimmigrant visa application processes, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). This program helps ensure that

requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the revision of the Office of Management and Budget (OMB) Control Number 1205–0531, containing Form ETA–9142–B–CAA–2, *Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 205 of Division M of the Consolidated Appropriations Act, 2018 Public Law 115–141 (March 23, 2018),* which expires November 30, 2018. A copy of the proposed information collection request can be obtained by contacting the office listed below in the ''Addresses'' section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 29, 2018.

ADDRESSES: Written comments may be submitted by the following methods:

- *Email (encouraged): ETA.OFLC.Forms@dol.gov.*
- *Mail:* William W. Thompson II, Administrator, Office of Foreign Labor Certification, Box PPII 12–200, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.
- *Fax:* 202–513–7395.

Instructions: Comments which are related to specific forms should identify that form or form instruction using the form number, *e.g.,* Form 9142–B–CAA–2, and should identify the particular requirement to which the comment relates. A copy of the proposed information collection request (ICR) can be obtained by contacting the Office of Foreign Labor Certification as listed above. For this information collection, the Department is solely seeking comments in connection with the record keeping requirement and the associated burden. The Department does not does not seek comment on the Form 9142–B–CAA–2 itself because the form is no longer in use.

FOR FURTHER INFORMATION CONTACT: William W. Thompson II, Administrator, Office of Foreign Labor Certification, 202–513–7350 (this is not a toll-free number), or for individuals with hearing or speech impairments, 1–877–889–5627 (this is the TTY toll-free Federal Information Relay Service number), Box PPII 12–200, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

The H–2B visa program enables employers to bring nonimmigrant foreign workers to the U.S. to perform nonagricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(b). For purposes of the H–2B program, the Immigration and Nationality Act and governing federal regulations require the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States on a temporary basis for the purpose of performing non-agricultural services or labor will not, by doing so, adversely affect wages and working conditions of U.S. workers who are similarly employed. In addition, the Secretary of Labor must certify that qualified U.S. workers are not available to perform such temporary labor or services.

Section 205 of Division M of the Consolidated Appropriations Act, 2018 (2018 Act), authorized the Secretary of the Department Homeland Security (DHS), in consultation with the Secretary of Labor, to increase the number of H–2B visas available to U.S. employers in Fiscal Year (FY) 2018, notwithstanding the otherwise established statutory numerical limitation. In consultation with the Secretary of Labor, the Secretary of Homeland Security increased the H–2B cap for FY 2018 by up to 15,000 additional visas for American businesses that were likely to suffer irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on their petition before the end of FY 2018. As set forth in the Temporary Rule: *Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 83 FR 24905 (May 31, 2018), which implemented the 2018 Act, employers seeking authorization to employ workers under this time-limited authority were required to complete and submit Form ETA–9142–B–CAA–2, *Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 205 of Division M of the Consolidated Appropriations Act, 2018,* Public Law 115–141 (March 23, 2018).

This collection of information is required by the regulations that went into effect on May 31, 2018. Initial clearance for this information collection was sought using PRA emergency procedures outlined in regulations at 5 CFR 1320.13. The exigency created by the 2018 Act and the short period of time remaining in the fiscal year for U.S. employers to receive additional visas as authorized under the 2018 Act required initial clearance using expedited processes. As a result, the Department now seeks public comment to revise this information collection, through the notice and comment process, in compliance with PRA laws and regulations.

Because the expanded visa cap under the 2018 Act has been met, employers are no longer permitted to submit Form ETA–9142–B–CAA–2. However, employers must continue to retain the form and required supporting documentation for three (3) years from the date of certification for each H–2B application for which an employer submitted Form ETA–9142–B–CAA–2 to DHS. As a result, the Department seeks public comment to revise the information collection as a result of continued record retention requirements now that Form ETA–9142–B–CAA–2 is no longer in use. The Department proposes to eliminate the burden associated with the preparation and submission of the form, including the requirements of assessing irreparable harm and conducting additional requirement, because the form is no longer required or accepted in connection with petitions for H–2B workers.

II. Review Focus

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and also the agency's estimates associated with the annual burden cost incurred by respondents and the government cost associated with this collection of information;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

For complete details regarding the proposed revisions to this ICR, contact

the office listed in the **FOR FURTHER INFORMATION CONTACT** section above.

III. Current Actions

This revision request will allow ETA to meet its statutory responsibilities under the 2018 Act related to the H–2B nonimmigrant temporary non-agricultural employment-based visa program.

This information collection is subject to the PRA. A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid control number. *See* 5 CFR 1320.5(a) and 1320.6. The Department obtains OMB approval for this information collection under control number 1205–0531.

Title of the Collection: Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 205 of Division M of the Consolidated Appropriations Act, 2018 Public Law 115–141 (March 23, 2018).

Type of Review: Revision of a Currently Approved Information Collection.

Form: Form ETA–9142–B–CAA–2.

OMB Number: 1205–0531.

Affected Public: Private Sector (businesses or other for-profits and not-for-profit institutions) and State, Local, and Tribal Governments.

Total Estimated Annual Respondents: 5,177.

Annual Frequency: On occasion.

Total Estimated Annual Responses: 5,177.

Total Estimated Average Time per Response: 1 hours.

Total Estimated Annual Burden Hours: 5,177 hours.

Total Estimated Annual Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (*e.g.,* confidential business information or personally identifiable information such as a social security number).

Rosemary Lahasky,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2018–18817 Filed 8–29–18; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of the Secretary

Procedures for Appointment of Administrative Law Judges for the Department of Labor

Subject: Secretary's Order 07–2018.

1. *Purpose.* To provide for transparent and consistent processes by which the Secretary of Labor shall select and appoint individuals to be Administrative Law Judges (ALJs) within the Department of Labor (DOL or Department).

2. *Authorities and Directives Affected.*

A. Authorities. This Order is issued pursuant to the following authorities:

i. U.S.C. art. II, § 2, cl. 2;

ii. 5 U.S.C. 3105;

iii. 5 CFR 6.2–6.4, 6.8;

iv. Executive Order Excepting Administrative Law Judges from the Competitive Service (July 10, 2018).

B. Directives Affected. This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order or DLMS 10–100–205.

3. *Background.* The Secretary has the authority and responsibility to appoint the Department's ALJs. These appointments should be made through a transparent and consistent process. Accordingly, this Order establishes procedures by which these appointments shall be made.

4. *Responsibilities.*

A. The Assistant Secretary for Administration and Management, in consultation with the Deputy Secretary, is assigned responsibility for issuing written guidance, as necessary, to implement this Order.

B. The Solicitor of Labor is responsible for providing legal advice to DOL on all matters arising in the implementation and administration of this Order.

5. *Procedure.* The following procedures shall apply to the selection and appointment of ALJs after the date of this Order:

A. A notice of vacancy and solicitation of applications shall be posted in the **Federal Register** and/or on the ALJ website or other appropriate location for public notice. The vacancy shall be held open for a minimum of thirty days, during which applications shall be accepted, and can be continuous, if desired. The notice shall specify: The minimum criteria for appointment; the documentation an applicant must submit for consideration; the deadline, if any, by which such documentation must be submitted; and the email address and/or physical address where documentation may be submitted.

B. Applications will be directed to the Office of Executive Resources (OER) within the Office of the Assistant Secretary for Administration and Management (OASAM) to be screened for whether an applicant has submitted all required documentation and meets the minimal qualifications for the position.

C. OER will deliver qualified applications to an interview panel consisting of the Department's Chief Administrative Law Judge, Chief Human Capital Officer, the Assistant Secretary for Policy, and a Member of the Employees' Compensation Appeals Board (ECAB). If any of the positions required for the review panel are vacant, the Secretary will select an alternative from the members of the Department's Senior Executive Service (SES). The Department's Director for the Office of Executive Resources, or designee, shall be present for each meeting of the panel.

D. The interview panel or their designees will review and rank the qualified applications taking into account needs of the agency. The panel will then interview the top-ranked candidates for the open position(s) and forward their recommended candidates to the Deputy Secretary.

E. The Deputy Secretary in consultation with a career ethics attorney from the Office of the Solicitor will provide the Secretary with the recommended candidate(s) for appointment as well as resumes of the other top-ranked candidates interviewed but not recommended.

F. The Secretary shall make the final decision and appointment, or may instead order another candidate search be completed.

6. *Qualifications.* The notice of vacancy and solicitation for application shall require the following minimum qualifications but may also contain others: A J.D. from an accredited law school; licensure and authorization to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the U.S. Constitution; an ''active'' [1] bar status and/or membership in ''good standing'' for at least ten years total in at least one jurisdiction in which the applicant is admitted; seven years of relevant litigation or administrative law experience; and knowledge of statutes enforced by the Department of Labor,

[1] Judicial status is acceptable in lieu of ''active'' status in States that prohibit sitting judges from maintaining ''active'' status to practice law. Being in ''good standing'' is acceptable in lieu of ''active'' status in jurisdictions where the licensing authority considers ''good standing'' as having a current license to practice law.

such as the Black Lung Benefits Act, Service Contract Act, Longshore and Harbor Workers' Compensation Act, Fair Labor Standards Act, whistleblower protections enforced by the Occupational Safety and Health Administration, or knowledge of other similar laws.

A. Relevant litigation experience can include: Preparing for, participating in, and/or conducting formal hearings, trials, or appeals at the federal, state, or local level; participating in settlement or plea negotiations in advance of such proceedings; hearing cases; preparing opinions; participating in or conducting arbitration, mediation, or other alternative dispute resolution.

B. Relevant administrative law experience is litigation experience in cases initiated before a governmental administrative body.

7. *Appointments.* Sitting ALJs and ALJ candidates selected under this Order are appointed Federal officers. Appointment under this Order shall not affect any other authority of the Secretary.

8. *Privacy.* This Order is subject to the applicable laws, regulations, and procedures concerning the privacy of applicants to federal government employment.

9. *Exceptions.* The requirements of this Order are intended to be general in nature, and accordingly shall be construed and implemented consistent with more specific requirements of any statute, Executive Order, or other legal authority governing the Department's Office of Administrative Law Judges. In the event of a conflict, the specific statute, Executive Order, or other legal authority shall govern.

10. *Redelegation of Authority.* Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated in order to serve the purposes of this Order.

11. *Effective Date.* This Order is effective immediately. This Order does not apply to ongoing ALJ hiring for which an interim procedure has been approved.

Dated: August 16, 2018.

R. Alexander Acosta,

Secretary of Labor.

[FR Doc. 2018–18924 Filed 8–29–18; 8:45 am]

BILLING CODE 4510–04–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; ITAAC for Pneumatic Testing of VES Air Lines

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and has issued License Amendment Nos. 130 and 129 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on July 10, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The 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. The request for the amendment and exemption was submitted by letter dated December 20, 2017 and available in ADAMS under Accession No. ML17354A964
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 130 and 129 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise the Updated Final Safety Analysis Report in the form of changes from the incorporated plant-specific Design Control Document (DCD) Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information. Specifically, the licensee requested to allow a pneumatic test to be used in lieu a hydrostatic test for the Main Control Room Emergency Habitability System consistent with American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III. Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the

exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML18150A160.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML18156A143 and ML18156A144 respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML18156A145 and ML18156A147 respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In an application dated December 20, 2017, SNC requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 17–044, ''ITAAC [Inspections, Tests, Analysis, and Acceptance Criteria] for Pneumatic Testing of VES Air Lines''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No.ML18150A160, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding information in COL Appendix C of the Facility Combined License as described in the licensee's request dated December 20, 2017. This exemption is related to, and necessary for the granting of License Amendment No. 130 for Unit 3 and 129 for Unit 4, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No.ML18150A160), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated December 20, 2017 (ADAMS Accession No.ML17354A964), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for 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 COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on March 13, 2018 (83 FR10922). No comments were received during the 30-day comment period.

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.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on December 20, 2017.

The exemption and amendment were issued on July 10, 2018, as part of a combined package to the licensee (ADAMS Accession No. ML18156A141).

Dated at Rockville, Maryland, this 27th day of August 2018.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of Licensing, Siting, and Environmental Analysis Office of New Reactors.

[FR Doc. 2018–18846 Filed 8–29–18; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Occupational Safety and Health Review Commission (OSHRC) is revising the notice for Privacy Act system-of-records OSHRC–4.

DATES: Comments must be received by OSHRC on or before October 1, 2018. The revised system of records will become effective on that date, without any further notice in the **Federal Register**, unless comments or government approval procedures necessitate otherwise.

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

- *Email: rbailey@oshrc.gov.* Include ''PRIVACY ACT SYSTEM OF RECORDS'' in the subject line of the message.
- *Fax:* (202) 606–5417.
- *Mail*: One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.
- *Hand Delivery/Courier:* Same as mailing address.

Instructions: All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as ''PRIVACY ACT SYSTEM OF RECORDS.''

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606–5410, or via email at *rbailey@oshrc.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires federal agencies such as OSHRC to publish in the **Federal**

Register notice of any new or modified system of records. No significant changes have been made to the following system-of-records notice. However, the Office of Management and Budget in OMB Circular A–108, at p. 11, has encouraged agencies not to rely on blanket routine uses—uses listed in a separate document that apply to all systems of records. OSHRC, therefore, has revised its notice for OSHRC–6 to include a full description of the applicable routine uses. This is simply a change in format that has not resulted in any substantive changes to the routine uses for this system of records.

The notice for OSHRC–6, provided below in its entirety, is as follows.

SYSTEM NAME AND NUMBER

E-Filing/Case Management System, OSHRC–6.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Electronic records are maintained in a private cloud within an Oracle Database, operated by MicroPact at 12901 Worldgate Drive, Suite 800, Herndon, VA 20170. Paper records are maintained by the Office of the Executive Secretary, located at 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.

SYSTEM MANAGER(S):

Supervisory Information Technology Specialist (electronic records contained in the e-filing/case management system) and the Executive Secretary (all other records), OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457; (202) 606–5100.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 661.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for the purpose of processing cases that are before OSHRC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records covers (1) ALJs; (2) Commission members and their staff; (3) OSHRC employees entering data into the e-filing/case management system, or assigned responsibilities with respect to a particular case; and (4) parties, the parties' points of contact, and the parties' representatives in cases that have been, or presently are, before OSHRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

The electronic records contain the following information: (1) The names of those covered by the system of records and, as to parties, their points of contact; (2) the telephone and fax numbers, business email addresses, and/or business street addresses of those covered by the system of records; (3) the names of OSHRC cases, and information associated with the cases, such as the inspection number, the docket number, the state in which the action arose, the names of the representatives, and whether the case involved a fatality; (4) events occurring in cases and the dates on which the events occurred; (5) documents filed in cases and the dates on which the documents were filed; and (6) the names of OSHRC employees entering data into the e-filing/case management system, or assigned responsibilities with respect to a particular case. The paper records are hard copies of the electronic records in the e-filing/case management system.

RECORD SOURCE CATEGORIES:

Information in this system is derived from the individual to whom it applies or is derived from case processing records maintained by the Office of the Executive Secretary and the Office of the General Counsel, or from information provided by the parties who appear before OSHRC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

(1) To the Department of Justice (DOJ), or to a court or adjudicative body before which OSHRC is authorized to appear, when any of the following entities or individuals—(a) OSHRC, or any of its components; (b) any employee of OSHRC in his or her official capacity; (c) any employee of OSHRC in his or her individual capacity where DOJ (or OSHRC where it is authorized to do so) has agreed to represent the employee; or (d) the United States, where OSHRC determines that litigation is likely to affect OSHRC or any of its components—is a party to litigation or has an interest in such litigation, and OSHRC determines that the use of such records by DOJ, or by a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation.

(2) To an appropriate agency, whether federal, state, local, or foreign, charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes civil, criminal or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

(3) To a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to an OSHRC decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit.

(4) To a federal, state, or local agency, in response to that agency's request for a record, and only to the extent that the information is relevant and necessary to the requesting agency's decision in the matter, if the record is sought in connection with the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit by the requesting agency.

(5) To an authorized appeal grievance examiner, formal complaints manager, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee, only to the extent that the information is relevant and necessary to the case or matter.

(6) To OPM in accordance with the agency's responsibilities for evaluation and oversight of federal personnel management.

(7) To officers and employees of a federal agency for the purpose of conducting an audit, but only to the extent that the record is relevant and necessary to this purpose.

(8) To OMB in connection with the review of private relief legislation at any stage of the legislative coordination and clearance process, as set forth in Circular No. A–19.

(9) To a Member of Congress or to a person on his or her staff acting on the Member's behalf when a written request is made on behalf and at the behest of

the individual who is the subject of the record.

(10) To the National Archives and Records Administration (NARA) for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

(11) To appropriate agencies, entities, and persons when: (a) OSHRC suspects or has confirmed that there has been a breach of the system of records; (b) OSHRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OSHRC, the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OSHRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(12) To NARA, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(13) To another federal agency or federal entity, when OSHRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(14) To a bar association or similar federal, state, or local licensing authority for a possible disciplinary action.

(15) To vetted MicroPact employees in order to ensure that the e-filing/case management system is properly maintained.

(16) To the public, in accordance with 29 U.S.C. 661(g), for the purpose of inspecting and/or copying the records at OSHRC.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

At MicroPact's secure facility, the information is stored in a database contained on a separate database server behind the application server serving the data. Paper records are stored in the records room and in file cabinets.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic records contained in the case e-filing/case management system may be retrieved by any of the data items listed under ''Categories of Records in the System,'' including docket number, inspection number, any part of a representative's name or the case name, and user. Paper records may be retrieved manually by docket number or case name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Under Records Disposition Schedule N1–455–90–1, paper case files may be destroyed 20 years after a case closes. Under Records Disposition Schedule N1–455–11–2, electronic records pertaining to those paper case files may be deleted when no longer needed for the conduct of current business.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records contained in the e-filing/case management system are safeguarded as follows. Data going across the internet is encrypted using SSL encryption. Every system is password protected. MicroPact, which stores the data in a private cloud within an Oracle Database, operates its own datacenter that is protected by physical security measures. Only authorized MicroPact employees who have both physical key and key card access to the datacenter can physically access the sites where data is stored. Only authorized and vetted MicroPact employees have access to the servers containing any PII.

The access of parties and their representatives to electronic records in the system is limited to active files pertaining to cases in which the parties are named, or the representatives have entered appearances. The access of OSHRC employees is limited to personnel having a need for access to perform their official functions and is additionally restricted through password identification procedures.

Paper records are maintained in a records room that can only be accessed using a smartcard or a key. Some paper records are also maintained in file cabinets. During duty hours, these records are under surveillance of personnel charged with their custody, and after duty hours, the records are secured behind locked doors. Access to the cabinets is limited to personnel having a need for access to perform their official functions.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.6 (procedures for requesting records).

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on the specific procedures for contesting the contents of a record, refer to 29 CFR 2400.8 (Procedures for requesting amendment), and 29 CFR 2400.9 (Procedures for appealing).

NOTIFICATION PROCEDURES:

Individuals interested in inquiring about their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.5 (notification), and 29 CFR 2400.6 (procedures for requesting records).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

July 7, 2016, 81 FR 44335; and September 28, 2017, 82 FR 45324.

Dated: August 23, 2018.

Nadine N. Mancini,

General Counsel, Senior Agency Official for Privacy.

[FR Doc. 2018–18786 Filed 8–29–18; 8:45 am]

BILLING CODE 7600–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2018–213 and CP2018–295; MC2018–214 and CP2018–296]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 4, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2018–213 and CP2018–295; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 87 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 24, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd*; Comments Due:* September 4, 2018.

2. *Docket No(s).:* MC2018–214 and CP2018–296; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 72 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 24, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd*; Comments Due:* September 4, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–18863 Filed 8–29–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 30, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 24, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 72 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–214, CP2018–296.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–18792 Filed 8–29–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 30, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 24, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 87 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–213, CP2018–295.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–18791 Filed 8–29–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83936; File No. SR–NYSEArca–2018–60]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the First Trust Long Duration Opportunities ETF Under NYSE Arca Rule 8.600–E

August 24, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 17, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the First Trust Long Duration Opportunities ETF under NYSE Arca Rule 8.600–E (''Managed Fund Shares''). The proposed 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 Exchange proposes to list and trade shares (''Shares'') of First Trust Long Duration Opportunities ETF (the ''Fund'') which under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares on the Exchange.[4]

The Shares are offered by First Trust Exchange-Traded Fund IV (the ''Trust''), which is registered with the Commission as an open-end management investment company.[5] The Fund is a series of the Trust.

First Trust Advisors L.P. is the investment adviser (''First Trust'' or ''Adviser'') to the Fund. First Trust Portfolios L.P. is the distributor (''Distributor'') for the Fund's Shares. The Bank of New York Mellon acts as the administrator, custodian and transfer agent (''Custodian'' or ''Transfer Agent'') for the Fund.

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not registered as a broker-dealer. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

First Trust Long Duration Opportunities ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund is to generate current income with a focus on preservation of capital. Under normal market conditions,[7] the Fund will invest at least 80% of its net assets in a portfolio of ''Fixed Income Securities'' (described below), which may be represented by derivatives relating to such securities. The term Fixed Income Securities means:

- Debt securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored entities (''GSE'' or ''U.S. Government Entities''), other than ''Agency Mortgage-Related Investments'' as referenced below;[8]
- mortgage-related debt securities and other mortgage-related instruments issued or guaranteed by the U.S. Government and U.S. Government Entities (collectively, ''Agency Mortgage-Related Investments''); and
- debentures related to securities issued or guaranteed by the U.S. Government and U.S. Government Entities.

The Fund may invest in the following derivative instruments: options, futures contracts and swap agreements.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On June 12, 2018, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–174332 and 811–22559) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795).

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[8] Government-sponsored entities include, for example, the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

According to the Registration Statement, the use of these derivative transactions may allow the Fund to obtain net long or short exposures to selected interest rates or durations. The Fund may also utilize derivatives to enhance return, to hedge some of the risks of its investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows or to preserve capital

The Fund may invest in exchange-traded funds (''ETFs'') that invest in Fixed Income Securities.[9] Such ETFs will count towards the Fund's 80% investment requirement described above.

The Fund may enter into mortgage dollar rolls.

The Fund may invest in to-be-announced transactions (''TBA'').

Cash earmarked or otherwise held as collateral for settling mortgage dollar rolls, TBA transactions, and other delayed-delivery transactions will count towards the Fund's 80% investment requirement described above.

The Fund may enter into short sales of any securities in which the Fund may invest.

Other Investments

While, under normal market conditions, the Fund will invest at least 80% of the Fund's net assets in the securities and financial instruments described above under ''Principal Investments'', the Fund may invest up to 20% of its net assets in the securities and financial instruments described below.

The Fund may invest in cash and cash equivalents.[10] In addition, the Fund may hold the following short-term instruments with maturities of three months or more: Certificates of deposit; bankers' acceptances; repurchase agreements and reverse repurchase agreements; bank time deposits; and commercial paper.

The Fund may invest up to 20% of its net assets in other fixed income securities, including asset-backed securities (''ABS'') and mortgage-related debt securities and other mortgage-related instruments not issued or guaranteed by the U.S. Government or U.S. Government Entities (''Non-Agency Mortgage-Related Investments'').[11]

The Fund may invest in non-exchange-traded investment company securities (*i.e.,* mutual funds).

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or −3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[12]

Use of Derivatives by the Fund

The Fund may invest in the types of derivatives described in the ''Other Investments'' section above for the purposes described in that section. Investments in derivative instruments will be made in accordance with the Fund's investment objective and policies.

To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Board''). In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives. The Adviser understands that market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their net asset value (''NAV''), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV[13] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units generally will consist of 50,000 Shares. The size of a Creation Unit is subject to change. As described in the Registration Statement, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket'').[14] In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments (which may include cash-in-lieu amounts) with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and the Transfer Agent with

[9] For purposes of this filing, the term ''ETFs'' includes Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[10] For purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to Rule 8.600–E.

[11] For purposes of this filing, Agency Mortgage-Related Investments and Non-Agency Mortgage-Related Investments consist of: (1) Residential mortgage-backed securities (''RMBS''); (2) commercial mortgage-backed securities (''CMBS''); (3) stripped mortgage-backed securities (''SMBS''), which are mortgage-backed securities where mortgage payments are divided up between paying the loan's principal and paying the loan's interest; and (4) collateralized mortgage obligations (''CMOs'') and real estate mortgage investment conduits (''REMICs'') where they are divided into multiple classes with each class being entitled to a different share of the principal and/or interest payments received from the pool of underlying assets.

[12] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[13] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m., Eastern Time (''E.T.''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

[14] It is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, the Fund may issue and redeem Creation Units on an in-kind (or partially in-kind) (or partially cash) basis.

respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Transfer Agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the ''Closing Time'') in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(a)(1),[15] (b)(1), and (b)(5), as described below.

The Fund will not comply with the requirements set forth in Commentary (b)(1) and (b)(5) to NYSE Arca Rule 8.600–E with respect to the Fund's investments in Fixed Income Securities.

The Fund will not comply with the requirement in Commentary .01(b)(1) to Rule 8.600–E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more.[16] Instead, the Exchange proposes that, except for periods of high cash inflows or outflows,[17] components that in the aggregate account for at least 30% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more.

As noted above in ''Principal Investments'', under normal market conditions, the Fund's principal holdings will include Agency Mortgage-Related Investments (as defined above), securities issued or guaranteed by the U.S. Government and U.S. Government Entities other than Agency Mortgage-Related Investments, and debentures related to securities issued or guaranteed by the U.S. Government and U.S. Government Entities. The Adviser represents that the Agency Mortgage-Related Investments market is extremely large and liquid; [18] however, individual bond sizes in Agency Mortgage-Related Investments tend to be slightly smaller on average than standard corporate obligation deal issuances. For example, as of March 31, 2018 there were approximately $3.06 trillion in Fannie Mae outstanding; however, that amount is comprised of tens of thousands of individual pools with a range of individual pool specific issue sizes. While an individual tranche may be less than $100 million, it may have been issued as part of a deal in excess of $100 million. The Adviser represents that, except for periods of high cash inflows or outflows, at least 30% (based on dollar amount invested) of the fixed income weight of the securities in which the Fund invests would have a minimum original principal amount outstanding of $50 million or more. The Adviser represents that these criteria are appropriate, based on the size and liquidity of the market in which agency mortgage securities generally trade and the anticipated availability of Agency Mortgage-Related Investments that would satisfy the Fund's investment parameters.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (*i.e.,* Non-Agency Mortgage-Related Investments) not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.[19] Instead, Non-Agency Mortgage-Related Investments will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

This alternative requirement is appropriate because the Fund's investment in Non-Agency Mortgage-Related Investments is expected to provide the Fund with benefits associated with increased diversification, as Non-Agency Mortgage-Related Investments tend to be less correlated to interest rates than many other fixed income securities. The Adviser represents that the Fund's investment in Non-Agency Mortgage-Related Investments will be subject to the Fund's liquidity procedures as adopted by the Board, and the Adviser does not expect that investments in Non-Agency Mortgage-Related Investments of up to 20% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments. The Exchange

[15] Commentary .01(a)(1) to NYSE Arca Rule 8.600–E provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis: (A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million; (B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months; (C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio; (D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; (E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and (F) American Depositary Receipts (''ADRs'') in a portfolio may be exchange-traded or non- exchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

[16] Commentary .01(b)(1) to Rule 8.600–E provides that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[17] *See* note 7, *supra.*

[18] The approximate average daily trading volume in agency mortgage-backed securities (''MBS'') from 2003–2017 was $249 billion. The average daily trading volume in agency MBS for June 2018 was approximately $223.2 billion. As of March 31, 2018, approximately $6.99 trillion in agency MBS was outstanding. (Source: Securities Industry and Financial Markets Association (SIFMA)).

[19] Commentary .01(b)(5) to NYSE Arca Rule 8.600–E provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

notes that the Commission has previously approved the listing of actively managed ETFs that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued ABS and MBS.[20] Thus, it is appropriate to allow an exception to the Fund's investments in Non-Agency Mortgage-Related Investments set forth in Commentary .01(b)(5) of the generic listing standards.

As noted above, the Fund may invest in equity securities that are non-exchange-traded open-end investment company securities (*i.e.,* mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded open-end investment company securities.[21] Investments in non-exchange-traded open-end investment company securities will not be principal investments of the Fund.[22] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.

With respect to investments by the Fund in non-exchange-traded investment company securities, because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(A) through (D) to Rule 8.600–E exclude application of those provisions to certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E).[23] In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund's investments in such securities.[24] Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

The Exchange notes that, other than Commentary .01(a)(1), (b)(1), and (b)(5) to Rule 8.600–E, as described above, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

Availability of Information

The Fund's website (*www.ftportfolios.com*) will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[25] and a calculation of

[20] *See, e.g.,* Securities Exchange Act Release Nos. 80946 (June 15, 2017) 82 FR 28126 (June 20, 2017) (SR–NASDAQ–2017–039) (permitting the Guggenheim Limited Duration ETF to invest up to 20% of its total assets in privately-issued, non-agency and non-GSE ABS and MBS); 76412 (November 10, 2015), 80 FR 71880 (November 17, 2015) (SR–NYSEArca–2015–111) (permitting the RiverFront Strategic Income Fund to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR–NYSEArca–2014–017) (permitting the Guggenheim Enhanced Short Duration ETF to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74109 (January 21, 2015), 80 FR 4327 (January 27, 2015) (SR–NYSEArca–2014–134) (permitting the IQ Wilshire Alternative Strategies ETF to invest up to 20% of its total assets in MBS and other ABS, without any limit on the type of such MBS and ABS); 83319 (May 24, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

[21] Commentary .01 (a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Derivative Securities Products (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8–E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2–E(j)(6).

[22] For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

[23] The Commission initially approved the Exchange's proposed rule change to exclude ''Derivative Securities Products'' (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8) and ''Index-Linked Securities (as described in Rule 5.2–E (j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j) (3 in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (''2008 Approval Order''). *See also,* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares). *See also,* Amendment No. 7 to SR–NYSEArca–2015–110, available at *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf*.

[24] *See* Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

[25] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time

the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.[26]

On a daily basis, the Fund will disclose the information required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Fixed Income Securities, and any other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Fund's Form N–CSR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Forms N–CSR and N–PX may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Intra-day and closing price information regarding futures and exchange-traded options will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding fixed income securities will be available from major market data vendors. Price information relating to OTC options and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. For exchange-listed securities, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Intraday and other price information for the fixed income securities in which the Fund will invest will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for certain Fixed Income Securities, including Agency Mortgage-Related Investments and Non-Agency Mortgage-Related Investments, to the extent transactions in such securities are reported to TRACE.[27] Non-exchange-traded open-end investment company securities are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors. Price information regarding U.S. government securities, GSEs, debentures, cash equivalents and other short-term instruments generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

Information regarding market price and trading volume of the Shares and ETFs will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and ETFs will be available via the Consolidated Tape Association (''CTA'') high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation (''OCC'') are available via the Options Price Reporting Authority (''OPRA''). In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[28] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Fund's Shares also will be subject to Rule 8.600–E(d)(2)(D) (''Trading Halts'').

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

With the exception of the requirements of Commentary .01(a)(1), (b)(5), and (e) to Rule 8.600–E as described above in ''Application of Generic Listing Requirements,'' the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. Consistent with NYSE Arca Rule 8.600–E(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3[29] under the Act, as provided by NYSE Arca Rule 5.3–E. The Exchange will obtain a representation from the issuer of the

of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[26] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[27] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For fixed income securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

[28] *See* NYSE Arca Rule 7.12–E.

[29] 17 CFR 240.10A–3.

Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. The Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[30]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, and ETFs with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.[31] In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

The Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[32] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares are listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. The Adviser is not registered as a broker-dealer. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

The Exchange notes that, other than Commentary .01(a)(1), (b)(5), and (e) to Rule 8.600–E, as described above, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer

[30] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[31] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').

[32] 15 U.S.C. 78f(b)(5).

of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and ETFs will be available via the CTA high-speed line, and from the national securities exchanges on which they are listed. The Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally will hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, Disclosed Portfolio, and quotation and last sale information for the Shares.

Deviations from the generic requirements, as described above, are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in a manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(1) to Rule 8.600–E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 30% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. The Adviser represents that the Agency Mortgage-Related Investments market is extremely large and liquid; [33] however, individual bond sizes in Agency Mortgage-Related Investments tend to be slightly smaller on average than standard corporate obligation deal issuances. The Adviser represents that, except for periods of high cash inflows or outflows, at least 30% (based on dollar amount invested) of the fixed income weight of the securities in which the Fund invests would have a minimum original principal amount outstanding of $50 million or more. The Adviser represents that these criteria are appropriate, based on the size and liquidity of the market in which agency mortgage securities generally trade and the anticipated availability of Agency Mortgage-Related Investments that would satisfy the Fund's investment parameters.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (*i.e.,* Non-Agency Mortgage-Related Investments and ABS) not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Non-Agency Mortgage-Related Investments will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

This alternative requirement is appropriate because the Fund's investment in Non-Agency Mortgage-Related Investments is expected to provide the Fund with benefits associated with increased diversification, as Non-Agency Mortgage-Related Investments tend to be less correlated to interest rates than many other fixed income securities. The Adviser represents that the Fund's investment in Non-Agency Mortgage-Related Investments will be subject to the Fund's liquidity procedures as adopted by the Board, and the Adviser does not expect that investments in Non-Agency Mortgage-Related Investments of up to 20% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments. The Exchange notes that the Commission has previously approved the listing of actively managed ETFs that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued ABS and MBS.[34] Thus, it is appropriate to expand the limit on the Fund's investments in Non-Agency Mortgage-Related Investments set forth in Commentary .01(b)(5) of the generic listing standards.

As noted above, the Fund's portfolio will not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded open-end investment company securities. The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded open-end investment company securities. Investments in non-exchange-traded open-end investment company securities will not be principal investments of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of shares of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally will hold fixed income

[33] *See* note 18, *supra.*

[34] *See* note 20, *supra.*

securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2018–60 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–2018–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–60, and should be submitted on or before October 1, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18781 Filed 8–29–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83941; File No. SR–BOX–2018–25]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect in the Exchange's Governing Documents and the Exchange's Rulebook, Changes to the Exchange's Name

August 24, 2018.

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 August 15, 2018, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect in the Exchange's governing documents and the Exchange's rulebook, changes to the Exchange's name. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to reflect in the Exchange's governing documents and the Exchange's rulebook, changes to the Exchange's name. On July 19, 2018, the BOX Options Exchange LLC Board of Directors approved that the name of BOX Options Exchange LLC be changed to ''BOX Exchange LLC'' and that each officer of the Company be, and hereby is, authorized and directed to undertake any actions required or advisable to carry out the name change, including with respect to the SEC and any governmental or third parties. The Exchange intends for these changes to be effective upon filing.

As proposed, references to the Exchange's name will be deleted and revised to state the new name, as described more fully below. No other substantive changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way. Accordingly, this filing is being submitted under Rule 19b–4(f)(3). In lieu of providing a copy of the

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

marked name changes, the Exchange represents that it will make the necessary non-substantive revisions described below to the Exchange's corporate governance documents and rulebook, and post updated versions of each on the Exchange's website pursuant to Rule 19b–4(m)(2).

The Exchange's Name Change

In connection with the name change of the Exchange, the Exchange is proposing to amend the Exchange's operative documents. Therefore, the Exchange proposes to amend the Exchange's Certificate of Amendment [sic] (the ''Exchange Certificate''), the Exchange's Limited Liability Company Agreement (the ''Exchange LLC Agreement''), the Exchange's Bylaws and the Exchange's Rules (collectively ''operative documents'') in connection with the name change of the Exchange. Within these documents the Exchange proposes to delete all references to BOX Options Exchange LLC and replace it with ''BOX Exchange LLC.''

In connection with the name change, the Exchange is also proposing to make non-substantive conforming changes to the BOX Holdings LLC Agreement and BOX Market LLC Agreement. Specifically, the Exchange proposes to delete all references to BOX Options Exchange LLC and replace it with ''BOX Exchange LLC'' in these documents.

Other Changes to the Exchange LLC Agreement

Lastly, the Exchange is also proposing to make other administrative changes in the Exchange LLC Agreement:

—Amend the preamble of the LLC Agreement and remove references to the Members of the Exchange. All Members are already detailed in Schedule 1 of the Exchange LLC Agreement.

—Amend the definition of ''Member'' in Article 1 to conform to the changes made in the preamble.

—Amend the definition of ''MXUS2'' to conform to the changes made in the preamble.

—Amend Section 18.3 (Notices) to update the notification requirements for Members.

—Amend Schedule 1 of the LLC Agreement to conform changes to the Unit Holders and applicable Economic Units, Economic Percentage Interest, Voting Units and Voting Percentage Interest already in place.[3]

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(1)[5] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associate with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the proposed change is a non-substantive change and does not impact the governance, ownership or operations of the Exchange. The Exchange believes that by ensuring that the Exchanges operative documents accurately reflect the new legal names, the proposed rule change would reduce potential investor or market participant confusion.

Further, the Exchange believes that the changes to the Exchange LLC Agreement would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the change would eliminate duplicate references to the Members and make conforming changes to the ownership details that are already in place, thereby reducing potential confusion. Market participants and investors would not be harmed and in fact could benefit from the increased clarity and transparency in the Exchange LLC Agreement, ensuring that market participants could more easily understand the Exchange LLC Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Exchange's governance and operative documents to reflect the abovementioned name changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act[6] and Rule 19b–4(f)(3) thereunder in that the proposed rule changes is concerned solely with the administration of the Exchange.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2018–25 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BOX–2018–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[3] *See* Securities Exchange Act Release Nos. 67273 (June 27, 2012), 77 FR 39547 (July 3, 2012) (SR–BOX–2012–008), 74267 (February 12, 2015), 80 FR 8913 (February 19, 2015) (SR–BOX–2015–009), 74477 (March 11, 2015), 80 FR 13932 (March 17, 2015) (SR–BOX–2015–14).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(1).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

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, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2018–25 and should be submitted on or before September 20, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18785 Filed 8–29–18; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33213; File No. 812–14807]

THL Credit, Inc., et al.

August 24, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment funds and accounts.

APPLICANTS: THL Credit, Inc. (''TCRD''), THL Credit Advisors LLC (''THLCA''), THL Credit Senior Loan Strategies LLC (''SLS,'' together with THLCA, the ''THL Advisers''), THL Credit Holdings, Inc. (''TCRD Subsidiary''), THL Credit Bank Loan Select Fund, THL Credit Wind River 2012–1 CLO Ltd., THL Credit Wind River 2013–1 CLO Ltd., THL Credit Wind River 2013–2 CLO Ltd., THL Credit Wind River 2014–1 CLO Ltd., THL Credit Wind River 2014–2 CLO Ltd., THL Credit Wind River 2014–3 CLO Ltd., THL Credit Wind River 2015–1 CLO Ltd., THL Credit Wind River 2015–2 CLO Ltd., THL Credit Wind River 2016–1 CLO Ltd., THL Credit Wind River 2016–2 CLO Ltd., THL Credit Wind River 2017–1 CLO Ltd., THL Credit Wind River 2017–2 CLO Ltd., THL Credit Wind River 2017–3 CLO Ltd., THL Credit Wind River 2017–4 CLO Ltd., THL Credit Wind River 2018–1 CLO Ltd., THL Credit Lake Shore MM CLO 2017–1, Ltd., THL Credit Direct Lending Fund III LLC, THL Credit Direct Lending Co-Invest III (E) LLC, THL Credit Direct Lending Co-Invest III LLC, THL Credit Direct Lending Fund III (A) LLC, THL Credit Bank Loan Select Fund (Offshore), THL Credit Wind River 2018–2 CLO Ltd., THL Credit Wind River 2018–3 CLO Ltd., THL Credit Lake Shore MM CLO II, Ltd., and THL Credit Strategic Funding LLC.

FILING DATES: The application was filed on August 9, 2017, and amended on July 23, 2018, and August 20, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 18, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants: 100 Federal Street, 31st Floor, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) and rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [1] and one or more other Regulated Funds and/or one or more Affiliated Funds [2] to enter into Co-

[1] ''Regulated Funds'' means TCRD, the Future Regulated Funds and the BDC Downstream Funds (defined below). ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) intends to participate in the Co-investment Program.

''Adviser'' means THLCA and SLS, together with any future investment adviser that (i) controls, is controlled by or is under common control with THLCA or SLS, as applicable, (ii) is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means any Existing Affiliated Fund (identified in Appendix A to the application), Existing THL Proprietary Accounts (as defined below), Future THL Proprietary Accounts, and any entity (a) whose investment adviser is an Adviser, (b) that either (i) would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act or (ii) relies on rule 3a–7 under the Act, (c) that intends to participate in the Co-Investment Program, and (d) that is not a BDC Downstream Fund. Applicants represent that no Existing Affiliated Fund is a BDC Downstream Fund. ''Future THL Proprietary Account'' means any direct or indirect, wholly- or majority-owned subsidiary of THLCA, or any other Adviser, that is formed in the future that, from time to time, may hold various financial assets in a principal capacity.

''BDC Downstream Fund'' means, with respect to any Regulated Fund that is a BDC, an entity (i) that the BDC directly or indirectly controls, (ii) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (iii) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (iv) whose investment adviser is an Adviser, (v) that is not a Wholly-Owned Investment Sub and (vi) is not a Greenway Entity or Logan JV (each defined below).

Affiliated Funds may include funds that are ultimately structured as collateralized loan obligation funds (''CLOs''). Such CLOs would be investment companies but for the exception provided in section 3(c)(7) of the Act or their ability to rely on rule 3a–7 of the Act. During the investment period of a CLO, the CLO may engage in customary transactions with another Affiliated Fund on a secondary basis at fair market value. For purposes of the Order, any securities that were

Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

Applicants

2. TCRD is a closed-end management investment company incorporated in Delaware that has elected to be regulated as a BDC under the Act.[4] TCRD's Board [5] currently consists of seven directors, five of whom are Independent Directors.[6] TCRD Subsidiary, a Delaware corporation, is a wholly-owned subsidiary of TCRD and holds equity or equity-like investments in portfolio companies organized as limited liability companies (or other forms of pass-through entities). TCRD Subsidiary is excluded from the definition of ''investment company'' by section 3(c)(7) of the Act.

3. THLCA, a Delaware limited liability company that is registered under the the Advisers Act, serves as the investment adviser to TCRD and to certain Existing Affiliated Funds. SLS, a Delaware limited liability company that is registered as an investment adviser under the Advisers Act, serves as investment adviser to certain Existing Affiliated Funds. SLS is a wholly-owned subsidiary of THLCA. THLCA and its direct and indirect wholly-owned subsidiaries may hold various financial assets in a principal capacity (the ''Existing THL Proprietary Accounts'' and together with any Future THL Proprietary Account, the ''THL Proprietary Accounts'').

4. The Existing Affiliated Funds are the investment funds identified in Appendix A to the application. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act.

5. Each of the applicants may be deemed to be controlled by THLP Debt Partners L.P. (''THLP''). THLP owns controlling interests in the Advisers and, thus, may be deemed to control the Regulated Funds and the Affiliated Funds. Applicants state that THLP does not currently offer investment advisory services to any person and is not expected to do so in the future. Applicants state that as a result, THLP has not been included as an applicant.

6. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[7] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the parent Regulated Fund and the Wholly-Owned Investment Sub. The Board of the parent Regulated Fund would make all relevant determinations under the Conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the parent Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board of the parent Regulated Fund will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

Applicants' Representations

A. Allocation Process

7. Applicants state that the Advisers are presented with thousands of investment opportunities each year on behalf of their clients and must determine how to allocate those opportunities in a manner that, over time, is fair and equitable to all of their clients. Such investment opportunities may be Potential Co-Investment Transactions.

8. Applicants represent that they have established processes for allocating

acquired by an Affiliated Fund in a Co-Investment Transaction that are then transferred to an Affiliated Fund that is or will become a CLO (an ''Affiliated Fund CLO'') will be treated as if the Affiliated Fund CLO acquired such securities in a Co-Investment Transaction and such securities will remain subject to the Order.

[3] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application. TCRD manages two limited term investment funds, THL Credit Greenway Fund LLC and THL Credit Greenway Fund II LLC (each, a ''Greenway Entity,'' and together, the ''Greenway Entities''). TCRD and the Greenway Entities previously agreed to conditions that would apply to any co-investment transactions between them, but the Greenway Entities are not applicants to the Order. Accordingly, the Greenway Entities would not be able to rely on the requested Order to participate in Co-Investment Transactions pursuant to the Order. Moreover, the Greenway Entities will not be making any new or follow-on co-investments with TCRD because the Greenway Entities are fully invested and do not, and will not at any point, have any capital to invest. No Greenway Entity will have an interest in any issuer that is the subject of a Co-Investment Transaction completed pursuant to the Order, and TCRD will not form or manage another entity structured in the same manner as the Greenway Entities. Additionally, THL Credit Logan JV LLC (''Logan JV''), a joint venture with TCRD and Perspecta Trust LLC, would not be able to rely on the requested Order and, accordingly, would not participate in Co-Investment Transactions pursuant to the Order. No entity that holds an interest in Logan JV is or would be an affiliated person, or an affiliated person of an affiliated person, of TCRD within the meaning of section 2(a)(3) of the Act, other than by virtue of its ownership interest in Logan JV.

[4] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[5] ''Board'' means (i) with respect to a Regulated Fund other than a BDC Downstream Fund, the board of directors (or the equivalent) of the Regulated Fund and (ii) with respect to a BDC Downstream Fund, the Independent Party of the BDC Downstream Fund.

''Independent Party'' means, with respect to a BDC Downstream Fund, (i) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (ii) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

[6] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[7] ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by TCRD or a Future Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund; (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

9. Specifically, applicants state that the Advisers are organized and managed such that teams and investment committees (''Investment Teams'' and ''Investment Committees''), responsible for evaluating investment opportunities and making investment decisions on behalf of clients are promptly notified of the opportunities. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [8] and any Board-Established Criteria [9] of a Regulated Fund, the policies and procedures will require that the relevant Investment Teams and Investment Committees responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund's Adviser to make its independent determination and recommendations under the Conditions.

10. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

11. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the applicable Investment Committee will approve the investment and the investment amount. Applicants state further that the applicable Investment Committee will notify the allocation committee that coordinates and facilitates an order submission process with a designated representative of each applicable investment committee of a Regulated Fund and Affiliated Fund to the extent such investment is consistent with its Board-Established Criteria and/or falls within its then-current Objectives and Strategies. Prior to the External Submission (as defined below), each proposed order or investment amount may be reviewed and adjusted, in accordance with the applicable Advisers' written allocation policies and procedures, by both the allocation committee, consisting of legal, compliance, and operations personnel and/or applicable investment committee of the Adviser (*e.g.,* tradable credit, or direct lending).[10] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[11]

12. Applicants acknowledge that some of the Affiliated Funds may not be funds advised by Advisers to Affiliated Funds because they are THL Proprietary Accounts. Applicants do not believe these THL Proprietary Accounts should raise issues under the Conditions because the allocation policies and procedures of the Advisers provide that investment opportunities are offered to client accounts before they are offered to THL Proprietary Accounts.

13. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed and to the extent there is excess amount available to invest, the THL Proprietary Accounts will be permitted to invest. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders and the THL Proprietary Accounts will not be permitted to invest.[12] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the

[8] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund other than a BDC Downstream Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

[9] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[10] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

[11] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o) and as if the committee members were directors of the fund.

[12] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions.

''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act.

Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[13]

B. Follow-On Investments

14. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments [14] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

15. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[15] If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

16. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment [16] or (ii) a Non-Negotiated Follow-On Investment.[17] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

17. Applicants propose that Dispositions [18] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[19]

18. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [20] or (ii) the securities are Tradable Securities [21] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

[13] However, if the size of the opportunity is decreased such that the aggregate of the original Internal Orders would exceed the amount of the remaining investment opportunity, then upon submitting any revised order amount to the Board of a Regulated Fund for approval, the Adviser to the Regulated Fund will also notify the Board promptly of the amount that the Regulated Fund would receive if the remaining investment opportunity were allocated pro rata on the basis of the size of the original Internal Orders. The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[14] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[15] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[16] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[17] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[18] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[19] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[20] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[21] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

D. Delayed Settlement

19. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa.[22] Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

20. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

[22] Applicants state this may occur for two reasons. First, when the Affiliated Fund or Regulated Fund is not yet fully funded because, when the Affiliated Fund or Regulated Fund desires to make an investment, it must call capital from its investors to obtain the financing to make the investment, and in these instances, the notice requirement to call capital could be as much as ten business days. Second, where, for tax or regulatory reasons, an Affiliated Fund or Regulated Fund does not purchase new issuances immediately upon issuance but only after a short seasoning period of up to ten business days.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) the THL Advisers to Affiliated Funds manage, and may be deemed to control, each of the Existing Affiliated Funds and any other Affiliated Fund will be managed by, and may be deemed to be controlled by an Adviser to Affiliated Funds; (ii) THLCA is the investment adviser to, and may be deemed to control, TCRD and an Adviser to Regulated Funds will be the investment adviser to, and may be deemed to control, any Future Regulated Fund, (iii) each BDC Downstream Fund will be deemed to be controlled by its BDC parent and/or its BDC parent's investment adviser; and (iv) the Advisers to Affiliated Funds and the Advisers to Regulated Funds are under common control. Thus, each of the Affiliated Funds could be deemed to be a person related to the Regulated Funds, including any BDC Downstream Fund, in a manner described by section 57(b) and related to the other Regulated Funds in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. In addition, because the THL Proprietary Accounts are controlled by THLCA and, therefore, may be under common control with TCRD, SLS, any future Advisers, and any Future Regulated Funds, the THL Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 57(b) and also prohibited from participating in the Co-Investment Program.

4. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [23] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[24] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[25]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the

[23] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[24] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[25] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. ''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in Section 57(b) (after giving effect to Rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in Section 57(b) to Section 2(a)(3)(D). ''Remote Affiliate'' means any person described in Section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund [26] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [27] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv).

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [28] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a

[26] Any THL Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).

[27] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

[28] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[29] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in this application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities

[29] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

(within the meaning of section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d) The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[30] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

16. *Proprietary Accounts.* The THL Proprietary Accounts will not be permitted to invest in a Potential Co-Investment Transaction except to the extent the aggregate demand from the Regulated Funds and the other Affiliated Funds is less than the total investment opportunity.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

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BILLING CODE 8011–01–P

[30] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 15c2–8, SEC File No. 270–421, OMB Control No. 3235–0481

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c2–8 (17 CFR 240.15c2–8). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c2–8 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires broker-dealers to deliver preliminary and/or final prospectuses to certain people under certain circumstances. In connection with securities offerings generally, including initial public offerings (''IPOs''), the rule requires broker-dealers to take reasonable steps to distribute copies of the preliminary or final prospectus to anyone who makes a written request, as well as any broker-dealer who is expected to solicit purchases of the security and who makes a request. In connection with IPOs, the rule requires a broker-dealer to send a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale (generally, this means any person who is expected to actually purchase the security in the offering) at least 48 hours prior to the sending of such confirmation. This requirement is sometimes referred to as the ''48 hour rule.''

Additionally, managing underwriters are required to take reasonable steps to ensure that all broker-dealers participating in the distribution of or trading in the security have sufficient copies of the preliminary or final prospectus, as requested by them, to enable such broker-dealer to satisfy their respective prospectus delivery obligations pursuant to Rule 15c2–8, as well as Section 5 of the Securities Act of 1933.

Rule 15c2–8 implicitly requires that broker-dealers collect information, as such collection facilitates compliance with the rule. There is no requirement to submit collected information to the Commission. In order to comply with the rule, broker-dealers participating in a securities offering must keep accurate records of persons who have indicated interest in an IPO or requested a prospectus, so that they know to whom they must send a prospectus.

The Commission estimates that the time broker-dealers will spend complying with the collection of information required by the rule is 5,950 hours for equity IPOs and 23,300 hours for other offerings. The Commission estimates that the total annualized cost burden (copying and postage costs) is $11,900,000 for IPOs and $932,000 for other offerings.

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 to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 27, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18847 Filed 8–29–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83951; File No. SR–FICC–2017–806]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of No Objection to an Advance Notice, as Modified by Amendment No. 1, To Amend the Loss Allocation Rules and Make Other Changes

August 27, 2018.

On December 18, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–FICC–2017–806 pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act'') [2] to amend the loss allocation rules and make other conforming and technical changes.[3] The

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On December 18, 2017, FICC filed the advance notice as proposed rule change SR–FICC–2017–022 with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on January 8, 2018. Securities Exchange Act Release No. 82427 (January 2, 2018), 83 FR 854 (January 8, 2018) (SR–FICC–2017–022). On February 8, 2018, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82670 (February 8, 2018), 83 FR 6626 (February 14, 2018) (SR–DTC–2017–022, SR–FICC–2017–022, SR–NSCC–2017–018). On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82909 (March 20, 2018), 83 FR 12990 (March 26, 2018) (SR–FICC–2017–022). On June 25, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 83510 (June 25, 2018), 83 FR 30791 (June 29, 2018) (SR–DTC–2017–022, SR–FICC–2017–022, SR–NSCC–2017–018). On June 28, 2018, FICC filed Amendment No. 1 to the Proposed Rule Change, which was published in the **Federal Register** on July 19, 2018. Securities Exchange Act Release No. 83631 (July 13, 2018), 83 FR 34193 (July 19, 2018) (SR–FICC–2017–022). FICC submitted a courtesy copy of Amendment No. 1 to the Proposed Rule Change through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the Proposed Rule Change has been publicly available on the Commission's website at *https://www.sec.gov/rules/sro/ficc.htm* since June 29, 2018. The Commission did not receive any comments. The proposal, as set forth in both the advance notice and the Proposed Rule Change, each as modified by Amendments No. 1, shall not take effect until all required regulatory actions are completed.

advance notice was published for comment in the **Federal Register** on January 30, 2018.[4] In that publication, the Commission also extended the review period of the advance notice for an additional 60 days, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[5] On April 10, 2018, the Commission required additional information from FICC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,[6] which tolled the Commission's period of review of the advance notice until 60 days from the date the information required by the Commission was received by the Commission.[7] On June 28, 2018, FICC filed Amendment No. 1 to the advance notice to amend and replace in its entirety the advance notice as originally filed on December 18, 2017.[8] On July 6, 2018, the Commission received a response to its request for additional information in consideration of the advance notice, which, in turn, added a further 60 days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act.[9] The Commission did not receive any comments. This publication serves as notice that the Commission does not object to the proposed changes set forth in the advance notice, as modified by Amendment No. 1 (hereinafter, ''Advance Notice'').

I. Description of the Advance Notice

The Advance Notice consists of proposed changes to FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'') and Mortgage-Backed Securities Division (''MBSD'' and, together with GSD, the ''Divisions'' and, each, a ''Division'') Clearing Rules (''MBSD Rules,'' and collectively with the GSD Rules, the ''Rules'')[10] in order to (1) modify each Division's loss allocation process; (2) align the Divisions' loss allocation rules with the three clearing agencies of The Depository Trust & Clearing Corporation (''DTCC'')—The Depository Trust Company (''DTC''), National Securities Clearing Corporation (''NSCC''), and FICC (collectively, the ''DTCC Clearing Agencies'');[11] (3) amend the MBSD Rules regarding the use of the MBSD's Clearing Fund; and (4) make conforming and technical changes. Each of these proposed changes is described below. A detailed description of the specific rule text changes proposed in this Advance Notice can be found in the Notice of Amendment No. 1.[12]

A. Changes to the Loss Allocation Process

The GSD Rules and the MBSD Rules each currently provide for a loss allocation process through which both FICC (by applying up to 25 percent of its retained earnings in accordance with Section 7(b) of GSD Rule 4 and Section 7(c) of MBSD Rule 4) and its members[13] would share in the allocation of a loss resulting from the default of a member for whom a Division has ceased to act pursuant to the Rules.[14] The GSD Rules and the MBSD Rules also recognize that FICC may incur losses outside the context of a defaulting member that are otherwise incident to each Division's clearance and settlement business.

The current GSD and MBSD loss allocation rules provide that, in the event the Division ceases to act for a member, the amount on deposit to the Clearing Fund from the defaulting member, along with any other resources of, or attributable to, the defaulting member that FICC may access under the GSD Rules or the MBSD Rules (*e.g.,* payments from Cross-Guaranty Agreements), are the first source of funds the Division would use to cover any losses that may result from the closeout of the defaulting member's guaranteed positions. If these amounts are not sufficient to cover all losses incurred, then each Division will apply the following available resources, in the following order: (1) As provided in the current Section 7(b) of GSD Rule 4 and Section 7(c) of MBSD Rule 4, FICC's corporate contribution of up to 25 percent of FICC's retained earnings existing at the time of the failure of a defaulting member to fulfill its obligations to FICC, or such greater amount as the Board of Directors may determine; and (2) if a loss still remains, use of the Clearing Fund of the Division and assessing the Division's Members in the manner provided in GSD Rule 4 and MBSD Rule 4, as the case may be. Specifically, FICC will divide the loss ratably between Tier One Netting Members and Tier Two Members with respect to GSD, or between Tier One Members and Tier Two Members with respect to MBSD, based on original counterparty activity with the defaulting member. Then the loss allocation process applicable to Tier One Netting Members or Tier One Members, as applicable, and Tier Two Members will proceed in the manner provided in GSD Rule 4 and MBSD Rule 4, as the case may be.

Pursuant to current Rules, the applicable Division will first assess each Tier One Netting Member or Tier One Member, as applicable, an amount up to $50,000, in an equal basis per such member. If a loss remains, the Division will allocate the remaining loss ratably among Tier One Netting Members or Tier One Members, as applicable, in

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[4] Securities Exchange Act Release No. 82583 (January 24, 2018), 83 FR 4358 (January 30, 2018) (SR–FICC–2017–806) (''Notice'').

[5] Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H). The Commission found that the advance notice raised complex issues and, accordingly, extended the review period of the advance notice for an additional 60 days until April 17, 2018. *See* Notice, *supra* note 4.

[6] 12 U.S.C. 5465(e)(1)(D).

[7] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); *see* Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Commission's Request for Additional Information,'' *available at http://www.sec.gov/rules/sro/ficc-an.shtml.*

[8] Securities Exchange Act Release No. 83748 (July 31, 2018), 83 FR 38375 (August 6, 2018) (SR–FICC–2017–806) (''Notice of Amendment No. 1''). FICC submitted a courtesy copy of Amendment No. 1 to the advance notice through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the advance notice has been publicly available on the Commission's website at *http://www.sec.gov/rules/sro/ficc-an.shtml* since June 29, 2018.

[9] 12 U.S.C. 5465(e)(1)(E) and (G); *see* 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 http://www.sec.gov/rules/sro/ficc-an.shtml.*

[10] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the GSD Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf,* and the MBSD Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf.*

[11] DTCC is a user-owned and user-governed holding company and is the parent company of DTC, FICC, and NSCC. DTCC operates on a shared services model with respect to the DTCC Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a DTCC Clearing Agency.

[12] *See* Notice of Amendment No. 1, *supra* note 8.

[13] The term ''Member'' is defined in both the GSD Rules and the MBSD Rules, and has a different meaning under each. *See supra* note 10. In the Notice of Amendment No. 1, FICC used ''member'' to refer to both the Members of GSD and MBSD. *See* Notice of Amendment No. 1, *supra* note 8.

[14] GSD is permitted to cease to act for (1) a GSD Member pursuant to GSD Rule 21 (Restrictions on Access to Services) and GSD Rule 22 (Insolvency of a Member), (2) a Sponsoring Member pursuant to Section 14 and Section 16 of GSD Rule 3A (Sponsoring Members and Sponsored Members), and (3) a Sponsored Member pursuant to Section 13 and Section 15 of GSD Rule 3A (Sponsoring Members and Sponsored Members). MBSD is permitted to cease to act for an MBSD Member pursuant to MBSD Rule 14 (Restrictions on Access to Services) and MBSD Rule 16 (Insolvency of a Member). GSD Rule 22A (Procedures for When the Corporation Ceases to Act) and MBSD Rule 17 (Procedures for When the Corporation Ceases to Act) set out the types of actions FICC may take when it ceases to act for a member. *Supra* note 10.

accordance with the amount of each Tier One Netting Member's or Tier One Member's respective average daily Required Fund Deposit over the prior 12 months. If a Tier One Netting Member or Tier One Member, as applicable, did not maintain a Required Fund Deposit for 12 months, its loss allocation amount will be based on its average daily Required Fund Deposit over the time period during which such member did maintain a Required Fund Deposit.

Pursuant to current Section 7(g) of GSD Rule 4 and MBSD Rule 4, if, as a result of the Division's application of the Required Fund Deposit of a member, a member's actual Clearing Fund deposit is less than its Required Fund Deposit, the member will be required to eliminate such deficiency in order to satisfy its Required Fund Deposit amount. In addition to losses that may result from the closeout of the defaulting member's guaranteed positions, Tier One Netting Members or Tier One Members, as applicable, can also be assessed for non-default losses incident to each Division's clearance and settlement business, pursuant to current Section 7(f) of GSD Rule 4 and MBSD Rule 4.

The Rules of both Divisions currently provide that Tier Two Members are only subject to loss allocation to the extent they traded with the defaulting member and their trades resulted in a liquidation loss. FICC will assess Tier Two Members ratably based on their loss as a percentage of the entire remaining loss attributable to Tier Two Members.[15] Tier Two Members are required to pay their loss allocation obligations in full and replenish their Required Fund Deposits as needed and as applicable. The current Rule provisions which provide for loss allocation of non-default losses incident to each Division's clearance and settlement business (*i.e.,* Section 7(f) of GSD Rule 4 and MBSD Rule 4) do not apply to Tier Two Members.

FICC proposes to change the manner in which each of the aspects of the loss allocation process described above would be employed. GSD and MBSD would clarify or adjust certain elements and introduce certain new loss allocation concepts, as further discussed below. In addition, the proposal would address the loss allocation process as it relates to losses arising from or relating to multiple default or non-default events in a short period of time, also as described below.

FICC proposes six key changes to enhance each Division's loss allocation process. Specifically, FICC proposes to make changes to each Division regarding (1) its Corporate Contribution, (2) the Event Period, (3) the loss allocation round and notice, (4) the look-back period, (5) the loss allocation withdrawal notice and cap, and (6) the governance around non-default losses, each of which is discussed below.

(1) Corporate Contribution

As stated above, Section 7(b) of GSD Rule 4 and Section 7(c) of MBSD Rule 4 currently provide that FICC will contribute up to 25 percent of its retained earnings (or such higher amount as the Board of Directors shall determine) to a loss or liability that is not satisfied by the defaulting member's Clearing Fund deposit. Under the proposal, FICC would amend the calculation of its corporate contribution from a percentage of its retained earnings to a mandatory amount equal to 50 percent of the FICC General Business Risk Capital Requirement.[16] FICC's General Business Risk Capital Requirement, as defined in FICC's Clearing Agency Policy on Capital Requirements,[17] is, at a minimum, equal to the regulatory capital that FICC is required to maintain in compliance with Rule 17Ad–22(e)(15) under the Act.[18] The proposed Corporate Contribution would be held in addition to FICC's General Business Risk Capital Requirement.

Currently, the Rules do not require FICC to contribute its retained earnings to losses and liabilities other than those from member defaults. Under the proposal, FICC would apply its Corporate Contribution to non-default losses as well. The proposed Corporate Contribution would apply to losses arising from Defaulting Member Events and Declared Non-Default Loss Events (as such terms are defined below), and would be a mandatory contribution by FICC prior to any allocation of the loss among the applicable Division's members.[19] As proposed, if the Corporate Contribution is fully or partially used against a loss or liability relating to an Event Period by one or both Divisions, the Corporate Contribution would be reduced to the remaining unused amount, if any, during the following 250 Business Days in order to permit FICC to replenish the Corporate Contribution.[20] To ensure transparency, all GSD Members and MBSD Members would receive notice of any such reduction to the Corporate Contribution.

There would be one FICC Corporate Contribution, the amount of which would be available to both Divisions and would be applied against a loss or liability in either Division in the order in which such loss or liability occurs. In other words, FICC would not have two separate Corporate Contributions for each Division. In the event of a loss or liability relating to an Event Period, whether arising out of or relating to a Defaulting Member Event or a Declared Non-Default Loss Event, attributable to only one Division, the Corporate Contribution would be applied to that Division up to the amount then available. If a loss or liability relating to an Event Period, whether arising out of or relating to a Defaulting Member Event or a Declared Non-Default Loss Event, occurs simultaneously at both Divisions, the Corporate Contribution would be applied to the respective Divisions in the same proportion that the aggregate Average RFDs of all members in that Division bear to the aggregate Average RFDs of all members in both Divisions.[21]

[15] GSD Rule 3B, Section 7 (Loss Allocation Obligations of CCIT Members) provides that CCIT Members will be allocated losses as Tier Two Members and will be responsible for the total amount of loss allocated to them. With respect to CCIT Members with a Joint Account Submitter, loss allocation will be calculated at the Joint Account level and then applied pro rata to each CCIT Member within the Joint Account based on the trade settlement allocation instructions. *Supra* note 10.

[16] FICC calculates its General Business Risk Capital Requirement as the amount equal to the greatest of (1) an amount determined based on its general business profile, (2) an amount determined based on the time estimated to execute a recovery or orderly wind-down of FICC's critical operations, and (3) an amount determined based on an analysis of FICC's estimated operating expenses for a six month period.

[17] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–NSCC–2017–004, SR–FICC–2017–007).

[18] 17 CFR 240.17Ad–22(e)(15).

[19] The proposed change would not require a Corporate Contribution with respect to the use of each Division's Clearing Fund as a liquidity resource; however, if FICC uses a Division's Clearing Fund as a liquidity resource for more than 30 calendar days, as set forth in proposed Section 5 of GSD Rule 4 and MBSD Rule 4, then FICC would have to consider the amount used as a loss to the respective Division's Clearing Fund incurred as a result of a Defaulting Member Event and allocate the loss pursuant to proposed Section 7 of Rule 4, which would then require the application of FICC's Corporate Contribution.

[20] FICC states that 250 Business Days would be a reasonable estimate of the time frame that FICC would be required to replenish the Corporate Contribution by equity in accordance with FICC's Clearing Agency Policy on Capital Requirements, including a conservative additional period to account for any potential delays and/or unknown exigencies in times of distress.

[21] FICC states that if a loss or liability relating to an Event Period, whether arising out of or relating to a Defaulting Member Event or a Declared Non-Default Loss Event, occurs simultaneously at both Divisions, allocating the Corporate Contribution ratably between the two Divisions based on the aggregate Average RFDs of their respective members

Continued

As compared to the current approach of applying ''up to'' a percentage of retained earnings to defaulting member losses, the proposed Corporate Contribution would be a fixed percentage of FICC's General Business Risk Capital Requirement, which would provide greater transparency and accessibility to members. The proposed Corporate Contribution would apply not only towards losses and liabilities arising out of or relating to Defaulting Member Events but also those arising out of or relating to Declared Non-Default Loss Events.

Under current Section 7(b) of GSD Rule 4 and Section 7(c) of MBSD Rule 4, FICC has the discretion to contribute amounts higher than the specified percentage of retained earnings, as determined by the Board of Directors, to any loss or liability incurred by FICC as result of the failure of a Defaulting Member to fulfill its obligations to FICC. This option would be retained and expanded under the proposal so that it would be clear that FICC can voluntarily apply amounts greater than the Corporate Contribution against any loss or liability (including non-default losses) of the Divisions, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

(2) Event Period

FICC states that in order to clearly define the obligations of each Division and its respective members regarding loss allocation and to balance the need to manage the risk of sequential loss events against members' need for certainty concerning their maximum loss allocation exposures, FICC proposes to introduce the concept of an Event Period to the GSD Rules and the MBSD Rules to address the losses and liabilities that may arise from or relate to multiple Defaulting Member Events and/or Declared Non-Default Loss Events that arise in quick succession in a Division. Specifically, the proposal would group Defaulting Member Events and Declared Non-Default Loss Events occurring within a period of 10 Business Days (''Event Period'') for purposes of allocating losses to members of the respective Divisions in one or more rounds, subject to the limitations of loss allocation as explained below.[22]

In the case of a loss or liability arising from or relating to a Defaulting Member Event, an Event Period would begin on the day one or both Divisions notify their respective members that FICC has ceased to act for the GSD Defaulting Member and/or the MBSD Defaulting Member (or the next Business Day, if such day is not a Business Day). In the case of a loss or liability arising from or relating to a Declared Non-Default Loss Event, an Event Period would begin on the day that FICC notifies members of the respective Divisions of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day). If a subsequent Defaulting Member Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period. An Event Period may include both Defaulting Member Events and Declared Non-Default Loss Events, and there would not be separate Event Periods for Defaulting Member Events or Declared Non-Default Loss Events occurring during overlapping 10 Business Day periods.

The amount of losses that may be allocated by each Division, subject to the required Corporate Contribution, and to which a Loss Allocation Cap would apply for any Member that elects to withdraw from membership in respect of a loss allocation round, would include any and all losses from any Defaulting Member Events and any Declared Non-Default Loss Events during the Event Period, regardless of the amount of time, during or after the Event Period, required for such losses to be crystallized and allocated.[23]

(3) Loss Allocation Round and Loss Allocation Notice

Under the proposal, a loss allocation ''round'' would mean a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Tier One Netting Members or Tier One Members, as applicable (a ''round cap''). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period would be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. FICC may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among Tier One Netting Members or Tier One Members, as applicable, that have not submitted a Loss Allocation Withdrawal Notice in accordance with proposed Section 7b of GSD Rule 4 or MBSD Rule 4.

Each loss allocation would be communicated to each Tier One Netting Member or Tier One Member, as applicable, by the issuance of a notice that advises the Tier One Netting Member or Tier One Member, as applicable, of the amount being allocated to it (''Loss Allocation Notice''). Each Tier One Netting Member's or Tier One Member's, as applicable, pro rata share of losses and liabilities to be allocated in any round would be equal to (1) the average of its Required Fund Deposit for the 70 Business Days preceding the first day of the applicable Event Period or such shorter period of time that the Tier One Netting Member or Tier One Member, as applicable, has been a member (each member's ''Average RFD''), divided by (2) the sum of Average RFD amounts of all Tier One Netting Members or Tier One Members, as applicable, subject to loss allocation in such round.

Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round would expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Tier One Netting Member or Tier One Member, as applicable, in that round has five Business Days from the issuance of such first Loss Allocation Notice for the round to notify FICC of its election to withdraw from membership with GSD or MBSD, as applicable, pursuant to proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, and thereby benefit from its Loss Allocation Cap.[24] In other words, the proposed

is appropriate because the aggregate Average RFDs of all members in a Division represent the amount of risks that those members bring to FICC over the look-back period of 70 Business Days.

[22] FICC states that having a 10 Business Day Event Period would provide a reasonable period of time to encompass potential sequential Defaulting Member Events or Declared Non-Default Loss Events that are likely to be closely linked to an initial event and/or a severe market dislocation episode, while still providing appropriate certainty for members concerning their maximum exposure to mutualized losses with respect to such events.

[23] Under the proposal, each Tier One Netting Member or Tier One Member, as applicable, that is a Tier One Netting Member or Tier One Member on the first day of an Event Period would be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Defaulting Member Event (other than a Defaulting Member Event with respect to which it is the Defaulting Member) and each Declared Non-Default Loss Event occurring during the Event Period.

[24] Pursuant to current Section 7(g) of GSD Rule 4 and MBSD Rule 4, the time period for a member to give notice, pursuant to Section 13 of GSD Rule 3 and MBSD Rule 3, of its election to terminate its membership in GSD or MBSD, as applicable, in respect of an allocation arising from any Remaining Loss allocated by FICC pursuant to Section 7(d) of GSD Rule 4 or Section 7(e) of MBSD Rule 4, as

change would link the Loss Allocation Cap to a round in order to provide Tier One Netting Members or Tier One Members, as applicable, the option to limit their loss allocation exposure at the beginning of each round. After a first round of loss allocations with respect to an Event Period, only Tier One Netting Members or Tier One Members, as applicable, that have not submitted a Loss Allocation Withdrawal Notice in accordance with proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, would be subject to further loss allocation with respect to that Event Period.

Currently, pursuant to Section 7(g) of GSD Rule 4 and MBSD Rule 4, if notification is provided to a member that an allocation has been made against the member pursuant to GSD Rule 4 or MBSD Rule 4, as applicable, and that application of the member's Required Fund Deposit is not sufficient to satisfy such obligation to make payment to FICC, the member is required to deliver to FICC by the Close of Business on the next Business Day, or by the Close of Business on the Business Day of issuance of the notification if so determined by FICC, that amount which is necessary to eliminate any such deficiency, unless the member elects to terminate its membership in FICC. Under the proposal, FICC is proposing that members would receive two Business Days' notice of a loss allocation, and members would be required to pay the requisite amount no later than the second Business Day following issuance of such notice.[25]

(4) Look-Back Period

Currently, the GSD Rules and the MBSD Rules calculate a Tier One Netting Member's or a Tier One Member's pro rata share for purposes of loss allocation based on the member's average daily Required Fund Deposit over the prior 12 months or such shorter period as may be available in the case of a member which has not maintained a deposit over such time period.

GSD and MBSD propose to calculate each Tier One Netting Member's or Tier One Member's, as applicable, pro rata share of losses and liabilities to be allocated in any round to be equal to (1) the Tier One Netting Member's or Tier One Member's, as applicable, Average RFD divided by (2) the sum of Average RFD amounts for all Tier One Netting Members or a Tier One Members, as applicable, that are subject to loss allocation in such round. Additionally, if a Tier One Netting Member or Tier One Member, as applicable, withdraws from membership pursuant to proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, GSD and MBSD are proposing that such member's Loss Allocation Cap be equal to the greater of (1) its Required Fund Deposit on the first day of the applicable Event Period or (2) its Average RFD.

FICC states that employing a revised look-back period of 70 Business Days instead of 12 months to calculate a Tier One Netting Member's or a Tier One Member's, as applicable, loss allocation pro rata share and Loss Allocation Cap is appropriate because FICC states that the current look-back period of 12 months is a very long period during which a member's business strategy and outlook could have shifted significantly, resulting in material changes to the size of its portfolios. FICC states that a look-back period of 70 Business Days would minimize that issue yet still would be long enough to enable FICC to capture a full calendar quarter of such members' activities and smooth out the impact from any abnormalities and/or arbitrariness that may have occurred.

(5) Loss Allocation Withdrawal Notice and Loss Allocation Cap

Currently, pursuant to Section 7(g) of GSD Rule 4 and MBSD Rule 4, a member can withdraw from membership in order to avail itself of a member's cap on loss allocation if the member notifies FICC via a written notice, in accordance with Section 13 of GSD Rule 3 or MBSD Rule 3, as applicable, of its election to terminate its membership. Current Section 13 of GSD Rule 3 and MBSD Rule 3 require a member to provide FICC with 10 days written notice of the member's termination; however, FICC, in its discretion, may accept such termination within a shorter notice period. Such notice must be provided by the Close of Business on the Business Day on which the loss allocation payment is due to FICC and, if properly provided to FICC, would limit the member's liability for a loss allocation to its Required Fund Deposit for the Business Day on which the notification of allocation is provided to the member.

Under the proposal, a Tier One Netting Member or Tier One Member, as applicable, would be able to limit its loss allocation exposure to its Loss Allocation Cap by providing notice of its election to withdraw from membership within five Business Days from the issuance of the first Loss Allocation Notice in any round of an Event Period. Each round would allow a Tier One Netting Member or Tier One Member, as applicable, the opportunity to notify FICC of its election to withdraw from membership after satisfaction of the losses allocated in such round. Multiple Loss Allocation Notices may be issued with respect to each round to allocate losses up to the round cap. As proposed, if a member timely provides notice of its withdrawal from membership in respect of a loss allocation round, the maximum amount of losses it would be responsible for would be its Loss Allocation Cap,[26] provided that the member complies with the requirements of the withdrawal process in proposed Section 7b of GSD Rule 4 and Section 7b of MBSD Rule 4. The proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, would provide that the Tier One Netting Member or Tier One Member, as applicable, must (1) specify in its Loss Allocation Withdrawal Notice an effective date of withdrawal, which date shall not be prior to the scheduled final settlement date of any remaining obligations owed by the member to FICC, unless otherwise approved by FICC; and (2) as of the time of such member's submission of the Loss Allocation Withdrawal Notice, cease submitting transactions to FICC for processing, clearance or settlement, unless otherwise approved by FICC.

As stated above, under the current Rules, the cap of a Tier One Netting Member or Tier One Member, as applicable, that provided a withdrawal notice would be its Required Fund Deposit for the Business Day on which the notification of allocation is provided to the member. Under the proposal, the Loss Allocation Cap of a Tier One Netting Member or Tier One Member, as applicable, would be equal to the greater of (1) its Required Fund Deposit on the first day of the applicable Event Period and (2) its Average RFD. Specifically, the first round and each subsequent round of loss allocation would allocate

applicable, and any Other Loss, is the Close of Business on the Business Day on which the loss allocation payment is due to FICC. Current Section 13 of GSD Rule 4 and MBSD Rule 4 requires a 10-day notice period. *Supra* note 10.

FICC states that it is appropriate to shorten such time period from 10 days to five Business Days because FICC needs timely notice of which Tier One Netting Members or Tier One Members, as applicable, would remain in its membership for purpose of calculating the loss allocation for any subsequent round. FICC states that five Business Days would provide Tier One Netting Members or Tier One Members, as applicable, with sufficient time to decide whether to cap their loss allocation obligations by withdrawing from their membership in GSD or MBSD, as applicable.

[25] FICC states that allowing members two Business Days to satisfy their loss allocation obligations would provide members sufficient notice to arrange funding, if necessary, while allowing FICC to address losses in a timely manner.

[26] If a member's Loss Allocation Cap exceeds the member's then-current Required Fund Deposit, it must still cover the excess amount.

losses up to a round cap of the aggregate of all Loss Allocation Caps of those Tier One Netting Members or Tier One Members, as applicable, included in the round. If a Tier One Netting Member or Tier One Member, as applicable, provides notice of its election to withdraw from membership, it would be subject to loss allocation in that round, up to its Loss Allocation Cap. If the first round of loss allocation does not fully cover FICC's losses, a second round will be noticed to those members that did not elect to withdraw from membership in the previous round; however, the amount of any second or subsequent round cap may differ from the first or preceding round cap because there may be fewer Tier One Netting Members or Tier One Members, as applicable, in a second or subsequent round if Tier One Netting Members or Tier One Members, as applicable, elect to withdraw from membership with GSD or MBSD, as applicable, as provided in proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, following the first Loss Allocation Notice in any round.

As proposed, a Tier One Netting Member or a Tier One Member, as applicable, that withdraws in compliance with proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, would remain obligated for its pro rata share of losses and liabilities with respect to any Event Period for which it is otherwise obligated under GSD Rule 4 or MBSD Rule 4, as applicable; however, its aggregate obligation would be limited to the amount of its Loss Allocation Cap as fixed in the round for which it withdrew.

FICC states that the proposed changes are designed to enable FICC to continue the loss allocation process in successive rounds until all of FICC's losses are allocated. To the extent that the Loss Allocation Cap of a Tier One Netting Member or Tier One Member, as applicable, exceeds such member's Required Fund Deposit on the first day of an Event Period, FICC may in its discretion retain any excess amounts on deposit from the member, up to the Loss Allocation Cap of a Tier One Netting Member or Tier One Member, as applicable.

(6) Declared Non-Default Loss Event

Aside from losses that FICC might face as a result of a Defaulting Member Event, FICC could incur non-default losses incident to each Division's clearance and settlement business.[27] The GSD Rules and the MBSD Rules currently permit FICC to apply Clearing Fund to non-default losses.[28] Section 5 of GSD Rule 4 and MBSD Rule 4 provides that the use of the Clearing Fund deposits is limited to satisfaction of losses or liabilities of FICC, which includes losses or liabilities that are otherwise incident to the operation of the clearance and settlement business of FICC, although the application of the Clearing Fund to such losses or liabilities is more limited under MBSD Rule 4 when compared to GSD Rule 4.[29] Section 7(f) of GSD Rule 4 and MBSD Rule 4 provides that any loss or liability incurred by the Corporation incident to its clearance and settlement business arising other than from a Remaining Loss shall be allocated among Tier One Netting Members or Tier One Members, as applicable, ratably, in accordance with their Average Required Clearing Fund Deposits.[30]

For both the GSD Rules and the MBSD Rules, FICC proposes enhancement of the governance around non-default losses that would trigger loss allocation to Tier One Netting Members or Tier One Members, as applicable, by specifying that the Board of Directors would have to determine that there is a non-default loss that may be a significant and substantial loss or liability that may materially impair the ability of FICC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among the Tier One Netting Members or Tier One Members, as applicable, in order to ensure that FICC may continue to offer clearance and settlement services in an orderly manner. The proposed change would provide that FICC would then be required to promptly notify members of this determination (a ''Declared Non-Default Loss Event''). In addition, FICC proposes to specify that a mandatory Corporate Contribution would apply to a Declared Non-Default Loss Event prior to any allocation of the loss among members. Additionally, FICC proposes language to clarify members' obligations for Declared Non-Default Loss Events.

Under the proposal, FICC would clarify the Rules of both Divisions to make clear that Tier One Netting Members or Tier One Members, as applicable, are subject to loss allocation for non-default losses (*i.e.,* Declared Non-Default Loss Events under the proposal) and Tier Two Members are not subject to loss allocation for non-default losses.

B. Changes To Align the Loss Allocation Rules

The proposed changes would align the loss allocation rules, to the extent practicable and appropriate, of the three DTCC Clearing Agencies so as to provide consistent treatment for firms that are participants of multiple DTCC Clearing Agencies. As proposed, the loss allocation process and certain related provisions would be consistent across the DTCC Clearing Agencies to the extent practicable and appropriate.

C. Use of MBSD Clearing Fund

The proposed change would delete language currently in Section 5 of MBSD Rule 4 that limits certain uses by FICC of the MBSD Clearing Fund to ''unexpected or unusual'' requirements for funds that represent a ''small percentage'' of the MBSD Clearing Fund. FICC states that these limiting phrases (which appear in connection with FICC's use of MBSD Clearing Fund to cover losses and liabilities incident to its clearance and settlement business outside the context of an MBSD Defaulting Member Event as well as to cover certain liquidity needs) are vague, imprecise, and should be replaced in their entirety. Specifically, FICC proposes to delete the limiting language with respect to FICC's use of MBSD Clearing Fund to cover losses and liabilities incident to its clearance and settlement business outside the context of an MBSD Defaulting Member Event so as to not have such language be interpreted as impairing FICC's ability to access the MBSD Clearing Fund in order to manage non-default losses. FICC proposes to delete the limiting

[27] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[28] The first paragraph of Section 7 in both GSD Rule 4 and MBSD Rule 4 is not clear and may suggest that losses or liabilities may only be allocated in a member default scenario, while Section 5 in both GSD Rule 4 and MBSD Rule 4 makes it clear that the applicable Division's Clearing Fund may be used to satisfy non-default losses.

[29] Section 5 of GSD Rule 4 provides that ''The use of the Clearing Fund deposits shall be limited to satisfaction of losses or liabilities of the Corporation . . . otherwise incident to the clearance and settlement business of the Corporation . . .'' *Supra* note 10.

Section 5 of MBSD Rule 4 provides that ''The use of the Clearing Fund deposits and assets and property on which the Corporation has a lien on shall be limited to satisfaction of losses or liabilities of the Corporation. . . otherwise incident to the clearance and settlement business of the Corporation with respect to losses and liabilities to meet unexpected or unusual requirements for funds that represent a small percentage of the Clearing Fund . . .'' *Supra* note 10.

[30] Section 7(f) of GSD Rule 4 and MBSD Rule 4 provides that ''Any loss or liability incurred by the Corporation incident to its clearance and settlement business . . . arising other than from a Remaining Loss (hereinafter, an ''Other Loss'') shall be allocated among [Tier One Netting Members/Tier One Members], ratably, in accordance with the respective amounts of their Average Required [FICC Clearing Fund Deposits/Clearing Fund Deposits]''. *Supra* note 10.

language with respect to FICC's use of MBSD Clearing Fund to cover certain liquidity needs because the effect of the limitation in this context is confusing and unclear.

D. Conforming and Technical Changes

FICC proposes to make various conforming and technical changes necessary to harmonize the remaining current Rules with the proposed changes. Such changes include, but are not limited to: (1) Amending Rule 1 (Definitions; Governing Law) to add cross-references to proposed terms that would be defined in Rule 4; (2) inserting, deleting, or changing various terms for clarity and consistency; (3) modifying the voluntary termination provisions to ensure that termination provisions in the GSD Rules and the MBSD Rules are consistent, whether voluntary or in response to a loss allocation, are consistent with one another to the extent appropriate; and (4) deleting obsolete sections due to the proposal.

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose 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 and strengthening the liquidity of systemically important financial market utilities.[31]

Section 805(a)(2) of the Clearing Supervision Act[32] authorizes the Commission to prescribe 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. Section 805(b) of the Clearing Supervision Act[33] provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[34] and Section 17A of the Act[35] (''Rule 17Ad–22'').[36] Rule 17Ad–22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[37] Therefore, it is appropriate for the Commission to review proposed changes in advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act[38] and against Rule 17Ad–22.[39]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposed changes in the Advance Notice are designed to help FICC promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system as discussed below.

FICC proposes to make the following changes to its loss allocation process as described above. First, for both the GSD Rules and the MBSD Rules, the proposed changes would modify the calculation of FICC's Corporate Contribution so that FICC would apply a mandatory fixed percentage of its General Business Risk Capital Requirement as compared to the current Rules which provide for a ''up to'' percentage of retained earnings. The proposed changes also would clarify that the proposed Corporate Contribution would apply to Declared Non-Default Loss Events, as well as Defaulting Member Events, on a mandatory basis prior to any allocation of the loss among Tier One Netting Members or Tier One Members, as applicable. The proposal would specify how the Corporate Contribution would be applied between Divisions. Moreover, the proposal specifies that if the Corporate Contribution is applied to a loss or liability relating to an Event Period, then for any subsequent Event Periods that occur during the 250 business days thereafter, the Corporate Contribution would be reduced to the remaining, unused portion of the Corporate Contribution. The Commission believes that these changes set clear expectations about how and when FICC's Corporate Contribution would be applied to help address a loss, and allow FICC to better anticipate and prepare for potential exposures that may arise during an Event Period.

Second, as described above, FICC proposes to determine a member's loss allocation obligation based on the average of its Required Fund Deposit over a look-back period of 70 Business Days and to determine its Loss Allocation Cap based on the greater of its Required Fund Deposit or the average thereof over a look-back period of 70 Business Days. Currently, the GSD Rules and the MBSD Rules calculate a Tier One Netting Member's or a Tier One Member's pro rata share for purposes of loss allocation based on the member's average daily Required Fund Deposit over the prior 12 months or such shorter period as may be available in the case of a member which has not maintained a deposit over such time period. These proposed changes are designed to allow FICC to calculate a member's pro rata share of losses and liabilities based on the amount of risk that the member brings to FICC, and cover a sufficient amount of time to measure such risk. The look-back period of 70 Business Days is designed to be long enough to enable FICC to capture a full calendar quarter of members' activities and to smooth out the impact from any abnormalities that may have occurred, but not excessively long such that members' business strategy and outlook could have shifted significantly during the time period, resulting in material changes to the size of its portfolios. As a result of these changes, the Commission believes that FICC should be in a better position to manage its risk by using a look-back period that more accurately reflects the amount of risk that the member brings to FICC.

Third, as described above, FICC proposes to introduce the concept of an Event Period, which would group Defaulting Member Events and Declared Non-Default Loss Events occurring within a period of 10 Business Days for purposes of allocating losses to members in one or more rounds. Under the current Rules, every time each Division incurs a loss or liability, FICC will initiate its current loss allocation process by applying its retained earnings and allocating losses. The current Rules do not contemplate a situation where loss events occur in quick succession. Accordingly, even if multiple losses occur within a short period, the current Rules dictate that FICC start the loss allocation process separately for each loss event. Having multiple loss allocation calculations and notices from FICC and withdrawal

[31] *See* 12 U.S.C. 5461(b).

[32] 12 U.S.C. 5464(a)(2).

[33] 12 U.S.C. 5464(b).

[34] 12 U.S.C. 5464(a)(2).

[35] 15 U.S.C. 78q–1.

[36] 17 CFR 240.17Ad–22.

[37] *Id.*

[38] 12 U.S.C. 5464(b).

[39] 17 CFR 240.17Ad–22.

notices from members after multiple sequential loss events could cause operational risk to FICC, since multiple notices may cause confusion at a time of significant stress.

The Commission believes that the proposed change to introduce an Event Period would improve upon the current loss allocation process described immediately above. Specifically, the introduction of an Event Period would provide a more defined and transparent structure than the current loss allocation process. Such an improved structure should enable both FICC and each member to more effectively manage the risks and potential financial obligations presented by sequential Defaulting Member Events and/or Declared Non-Default Loss Events that are likely to arise in quick succession and could be closely linked to an initial event and/or market dislocation episode. In other words, the proposed Event Period structure should help clarify and define for both FICC and its members how FICC would initiate a single defined loss allocation process to cover all loss events within 10 Business Days. As a result, all loss allocation calculation and notices from FICC and potential withdrawal notices from members would be tied back to one Event Period instead of each individual loss event.

Fourth, as described above, the proposal would improve upon the approach laid out in FICC's current Rules by providing for a loss allocation round, a Loss Allocation Notice process, a Loss Allocation Withdrawal Notice process, and a Loss Allocation Cap, for both the GSD Rules and the MBSD Rules. A loss allocation round would be a series of loss allocations relating to an Event Period, the aggregate amount of which would be limited by the round cap. When the losses allocated in a round equals the round cap, any additional losses relating to the Event Period would be allocated in subsequent rounds until all losses from the Event Period are allocated among members. Each loss allocation would be communicated to members by the issuance of a Loss Allocation Notice. Each member in a loss allocation round would have five Business Days from the issuance of such first Loss Allocation Notice for the round to notify FICC of its election to withdraw from membership with FICC, and thereby benefit from its Loss Allocation Cap. The Loss Allocation Cap of a member would be equal to the greater of its Required Fund Deposit on the first day of the applicable Event Period and its Average RFD. Members would have two Business Days after FICC issues a first round Loss Allocation Notice to pay the amount specified in such notice.

The Commission believes that those four proposed changes, to (1) establish a specific Event Period, (2) continue the loss allocation process in successive rounds, (3) clearly communicate with its members regarding their loss allocation obligations, and (4) effectively identify continuing members for the purpose of calculating loss allocation obligations in successive rounds, are designed to make FICC's loss allocation process more certain. In addition, the changes are designed to provide members with a clear set of procedures that operate within the proposed loss allocation structure, and provide increased predictability and certainty regarding members' exposures and obligations. Furthermore, by grouping all loss events within 10 business days, the loss allocation process relating to multiple loss events can be streamlined. With enhanced certainty, predictability, and efficiency, FICC would then be able to better manage its risks from loss events occurring in quick succession, and members would be able to better manage their risks by deciding whether and when to withdraw from membership and limit their exposures to FICC. Furthermore, the proposed changes are designed to reduce liquidity risk to members by providing a two-day window to arrange funding to pay for loss allocation, while still allowing FICC to address losses in a timely manner.

Fifth, as described above, for both the GSD Rules and the MBSD Rules, FICC proposes to clarify the governance around Declared Non-Default Loss Events by providing that the Board of Directors would have to determine that there is a non-default loss that may be a significant and substantial loss or liability that may materially impair the ability of FICC to provide its services in an orderly manner. FICC also proposes to provide that FICC would then be required to promptly notify members of this determination. In addition, FICC proposes to apply a mandatory Corporate Contribution to a Declared Non-Default Loss Event prior to any allocation of the loss among members.

The Commission believes that the immediately above described changes should provide an orderly and transparent procedure to allocate a non-default loss by requiring the Board of Directors to make a definitive decision to announce an occurrence of a Declared Non-Default Loss Event, and requiring FICC to provide a notice to members of such decision. The Commission further believes that an orderly and transparent procedure should result in a risk management process at FICC that is more robust as a result of enhanced governance around FICC's response to non-default losses, thereby promoting safety and soundness.

Collectively, the Commission believes that the proposed changes to FICC's loss allocation process would provide greater transparency, certainty, and efficiency to both FICC and members regarding the amount of resources and the instances in which FICC would apply such resources to address risks arising from Defaulting Member Events and Declared Non-Default Loss Events, which could occur in quick succession. The Commission believes that such transparency, certainty, and efficiency would allow better predictability to FICC and its members regarding their exposures, and in turn, would allow a risk management process at FICC and its members that is more robust in response to such events and would improve their ability to continue to operate and recover in a safe and sound manner during such events. Therefore, the Commission believes that the proposal promotes robust risk management as well as safety and soundness.

In addition to the key changes discussed above, FICC proposes to delete the limiting language with respect to FICC's use of MBSD Clearing Fund to cover losses and liabilities incident to its clearance and settlement business outside the context of an MBSD Defaulting Member Event so as to not have such language be interpreted as impairing FICC's ability to access the MBSD Clearing Fund in order to manage non-default losses. Further, FICC proposes to delete the limiting language with respect to FICC's use of MBSD Clearing Fund to cover certain liquidity needs because the effect of the limitation in this context is confusing and unclear. The Commission believes that the proposed change to delete certain vague and imprecise limiting language that could impair FICC's ability to access the MBSD Clearing Fund to cover losses and liabilities incident to its clearance and settlement business outside the context of an MBSD Defaulting Member Event, as well as to cover certain liquidity needs, is designed to promote robust risk management by allowing FICC to use MBSD Clearing Fund to manage its risk. In addition, the Commission believes that the change is designed to promote safety and soundness by enhancing FICC's ability to ensure that it can continue its operations and clearance and settlement services in an orderly manner in the event that it would be necessary or appropriate for FICC to access MBSD Clearing Fund deposits to

address losses, liabilities or liquidity needs to meet its settlement obligations.

Finally, FICC proposes to align the loss allocation rules of the DTCC Clearing Agencies to the extent practicable and appropriate. The alignment is designed to help provide consistent treatment for firms that are participants of multiple DTCC Clearing Agencies. The Commission believes that providing consistent treatment through consistent procedures among the DTCC Clearing Agencies would help firms that participate in multiple DTCC Clearing Agencies from encountering unnecessary complexities and confusion stemming from differences in procedures regarding loss allocation processes, particularly at times of significant stress. Accordingly, the Commission believes that the change is designed to reduce systemic risk and support the stability of the broader financial system.

Therefore, for all of the reasons stated above, the Commission believes that the changes proposed in the Advance Notice are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.[40]

B. Consistency With Rule 17Ad–22(e)(4)(viii)

Rule 17Ad–22(e)(4)(viii) under the Act requires, in part, that a covered clearing agency [41] establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by addressing allocation of credit losses the covered clearing agency may face if its collateral and other resources are insufficient to fully cover its credit exposures.[42]

As described above, the proposal would revise the loss allocation process to address how FICC would manage loss events, including Defaulting Member Events. Under the proposal, if losses arise out of or relate to a Defaulting Member Event, FICC would first apply its Corporate Contribution. If such funds prove insufficient, the proposal provides for allocating the remaining losses to the remaining members through the proposed process. Accordingly, the Commission believes that the proposal is reasonably designed to manage FICC's credit exposures to its members, by addressing allocation of credit losses.

Therefore, the Commission believes that FICC's proposal is consistent with Rule 17Ad–22(e)(4)(viii) under the Act.[43]

C. Consistency With Rule 17Ad–22(e)(13)

Rule 17Ad–22(e)(13) under the Act requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority to take timely action to contain losses and liquidity demands and continue to meet its obligations.[44]

As described above, the proposal would establish a more detailed and structured loss allocation process by (1) modifying the calculation and application of the Corporate Contribution; (2) introducing an Event Period; (3) introducing a loss allocation round and notice process; (4) implementing a look-back period to calculate a member's loss allocation obligation; (5) modifying the withdrawal process and the cap of withdrawing member's loss allocation exposure; and (6) providing the governance around a non-default loss. The Commission believes that each of these proposed changes helps establish a more transparent and clear loss allocation process and authority of FICC to take certain actions, such as announcing a Declared Non-Default Loss Event, within the loss allocation process. Further, having a more transparent and clear loss allocation process as proposed would provide clear authority to FICC to allocate losses from Defaulting Member Events and Declared Non-Default Loss Events and take timely actions to contain losses, and continue to meet its clearance and settlement obligations.

Therefore, the Commission believes that FICC's proposal is consistent with Rule 17Ad–22(e)(13) under the Act.[45]

D. Consistency With Rule 17Ad–22(e)(23)(i) and (ii)

Rule 17Ad–22(e)(23)(i) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures.[46] Rule 17Ad–22(e)(23)(ii) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[47]

As described above, the proposal would publicly disclose how FICC's Corporate Contribution would be calculated and applied. In addition, the proposal would establish and publicly disclose a detailed procedure in the Rules for loss allocation. More specifically, the proposed changes would establish an Event Period, loss allocation rounds, a look-back period to calculate each member's loss allocation obligation, a withdrawal process followed by a loss allocation process, and a Loss Allocation Cap that would apply to members after withdrawal. Additionally, the proposal would align the loss allocation rules across the DTCC Clearing Agencies to help provide consistent treatment, and clarify that non-default losses would trigger loss allocation to members. The proposal would also provide for and make known to members the procedures to trigger a loss allocation procedure, contribute FICC's Corporate Contribution, allocate losses, and withdraw and limit member's loss exposure. Accordingly, the Commission believes that the proposal is reasonably designed to (1) publicly disclose all relevant rules and material procedures concerning key aspects of FICC's default rules and procedures, and (2) provide sufficient information to enable members to identify and evaluate the risks by participating in FICC.

Therefore, the Commission believes that FICC's proposal is consistent with Rules 17Ad–22(e)(23)(i) and (ii) under the Act.[48]

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[49] that the Commission *does not object* to advance notice SR–FICC–2017–806, as modified by Amendment No. 1, and that FICC is *authorized* to implement the proposal as

[40] 12 U.S.C. 5464(b).

[41] A ''covered clearing agency'' means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1 *et seq.*) that is designated systemically important by the Financial Stability Oversight Counsel (''FSOC'') pursuant to the Clearing Supervision Act (12 U.S.C. 5461 *et seq.*). *See* 17 CFR 240.17Ad–22(a)(5) and (6). On July 18, 2012, FSOC designated FICC as systemically important. U.S. Department of the Treasury, ''FSOC Makes First Designations in Effort to Protect Against Future Financial Crises,'' *available at https://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx.* Therefore, FICC is a covered clearing agency.

[42] 17 CFR 240.17Ad–22(e)(4)(viii).

[43] *Id.*

[44] 17 CFR 240.17Ad–22(e)(13).

[45] *Id.*

[46] 17 CFR 240.17Ad–22(e)(23)(i).

[47] 17 CFR 240.17Ad–22(e)(23)(ii).

[48] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[49] 12 U.S.C. 5465(e)(1)(I).

of the date of this notice or the date of an order by the Commission approving proposed rule change SR–FICC–2017–022, as modified by Amendment No. 1, whichever is later.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18865 Filed 8–29–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83955; File No. SR–NSCC–2017–805]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection to an Advance Notice, as Modified by Amendment No. 1, To Adopt a Recovery & Wind-Down Plan and Related Rules

August 27, 2018.

On December 18, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–NSCC–2017–805 pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act'') [2] to adopt a recovery and wind-down plan (''R&W Plan'') and related rules.[3] The advance notice was published for comment in the **Federal Register** on January 30, 2018.[4] In that publication, the Commission also extended the review period of the advance notice for an additional 60 days, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[5] On April 10, 2018, the Commission required additional information from NSCC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,[6] which tolled the Commission's period of review of the advance notice until 60 days from the date the information required by the Commission was received by the Commission.[7] On June 28, 2018, NSCC filed Amendment No. 1 to the advance notice to amend and replace in its entirety the advance notice as originally filed on December 18, 2017.[8] On July 6, 2018, the Commission received a response to its request for additional information in consideration of the advance notice, which, in turn, added a further 60-days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act.[9] The Commission did not receive any comments. This publication serves as notice that the Commission does not object to the proposed changes set forth in the advance notice, as modified by Amendment No. 1 (hereinafter, ''Advance Notice'').

I. Description of the Advance Notice

In the Advance Notice, NSCC proposes to (1) adopt an R&W Plan; (2) amend NSCC's Rules & Procedures (''Rules'') [10] to adopt Rule 41 (Corporation Default), Rule 42 (Wind-down of the Corporation), and Rule 60 (Market Disruption and Force Majeure) (each a ''Proposed Rule'' and, collectively, the ''Proposed Rules''); and (3) re-number current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use.

NSCC states that the R&W Plan would be used by the Board of Directors of NSCC (''Board'') and management of NSCC in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern.

NSCC states that the Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow NSCC to effectuate its strategy for winding down and transferring its business; (2) provide Members and Limited Members with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations; and (3) provide NSCC with the legal basis to implement those provisions of the R&W Plan when necessary.

A. NSCC R&W Plan

The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to NSCC to either (i) recover, in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the ''Recovery Plan'') or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the ''Wind-down Plan'').

The R&W Plan would identify (i) the recovery tools available to NSCC to address the risks of (a) uncovered losses

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[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On December 18, 2017, NSCC filed the advance notice as proposed rule change SR–NSCC–2017–017 with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on January 8, 2018. Securities Exchange Act Release No. 82430 (January 2, 2018), 83 FR 841 (January 8, 2018) (SR–NSCC–2017–017). On February 8, 2018, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82669 (February 8, 2018), 83 FR 6653 (February 14, 2018) (SR–DTC–2017–021, SR–FICC–2017–021, SR–NSCC–2017–017). On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82908 (March 20, 2018), 83 FR 12986 (March 26, 2018) (SR–NSCC–2017–017). On June 25, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 83509 (June 25, 2018), 83 FR 30785 (June 29, 2018) (SR–DTC–2017–021, SR–FICC–2017–021, SR–NSCC–2017–017). On June 28, 2018, NSCC filed Amendment No. 1 to the Proposed Rule Change. Securities Exchange Act Release No. 83632 (July 13, 2018), 83 FR 34166 (July 19, 2018) (SR–NSCC–2017–017). NSCC submitted a courtesy copy of Amendment No. 1 to the Proposed Rule Change through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the Proposed Rule Change has been publicly available on the Commission's website at *https://www.sec.gov/rules/sro/nscc.htm* since June 29, 2018. The Commission did not receive any comments. The proposal, as set forth in both the advance notice and the Proposed Rule Change, each as modified by Amendments No. 1, shall not take effect until all required regulatory actions are completed.

[4] Securities Exchange Act Release No. 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR–NSCC–2017–805) (''Notice'').

[5] Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H). The Commission found that the advance notice raised novel and complex issues and, accordingly, extended the review period of the advance notice for an additional 60 days until April 17, 2018. *See* Notice, *supra* note 4.

[6] 12 U.S.C. 5465(e)(1)(D).

[7] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); *see* 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/rules/sro/nscc-an.htm.*

[8] Securities Exchange Act Release No. 83745 (July 31, 2018), 83 FR 38329 (August 6, 2018) (SR–NSCC–2017–805). NSCC submitted a courtesy copy of Amendment No. 1 to the advance notice through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the advance notice has been publicly available on the Commission's website at *https://www.sec.gov/rules/sro/nscc-an.htm* since June 29, 2018.

[9] 12 U.S.C. 5465(e)(1)(E) and (G); *see* 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/rules/sro/nscc-an.htm.*

[10] Capitalized terms used herein and not otherwise defined herein are defined in the Rules.

or liquidity shortfalls resulting from the default of one or more Members, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for implementation of such tools. The R&W Plan would also establish the strategy and framework for the orderly wind-down of NSCC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return NSCC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of NSCC and its parent, The Depository Trust & Clearing Corporation (''DTCC''); [11] (ii) an analysis of NSCC's intercompany arrangements and critical links to other financial market infrastructure (''FMI''); (iii) a description of NSCC's services, and the criteria used to determine which services are considered critical; (iv) a description of the NSCC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to NSCC to mitigate credit/market [12] risks and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a Crisis Continuum timeline; (vii) a discussion of potential non-default losses and the resources available to NSCC to address such losses, including recovery triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools' characteristics, including how they are designed to be comprehensive, effective, and transparent, how the tools provide incentives to Members to, among other things, control and monitor the risks they may present to NSCC, and how NSCC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of NSCC's business, including an estimate of the time and costs to effect a recovery or orderly wind-down of NSCC.

Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules); therefore, descriptions of those tools in the R&W Plan would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in contractual arrangements to which NSCC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that NSCC may develop further supporting internal guidelines and materials that may provide operational support for matters described in the R&W Plan, and that such documents would be supplemental and subordinate to the R&W Plan.

NSCC states that many of the tools available to NSCC that would be described in the R&W Plan are NSCC's existing, business-as-usual risk management and Member default management tools, which would continue to be applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe NSCC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity (''LNA'') to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements (''Capital Policy''),[13] (ii) maintaining the Clearing Agency Capital Replenishment Plan (''Replenishment Plan'') as a viable plan for the replenishment of capital should NSCC's equity fall close to or below the amount being held pursuant to the Capital Policy,[14] and (iii) the process for the allocation of losses among Members, as provided in Rule 4 (Clearing Fund).[15] The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning (''R&R Team'') of DTCC.[16] The R&R Team reports to the DTCC Management Committee (''Management Committee'') and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and would also review and approve any changes that are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of NSCC's default and its wind-down, and would provide for NSCC's authority to take certain actions on the occurrence of a Market Disruption Event, as defined therein. NSCC states that the Proposed Rules are designed to provide Members and Limited Members with transparency and certainty with respect to these matters. NSCC also states that the Proposed Rules are designed to facilitate the implementation of the R&W Plan, particularly NSCC's strategy for winding down and transferring its business, and are designed to provide NSCC with the legal basis to implement those aspects of the R&W Plan.

1. Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document's purpose and its regulatory background, and would outline a summary of the R&W Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and NSCC management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern.

The R&W Plan would describe DTCC's business profile, provide a summary of NSCC's services, and identify the intercompany arrangements and links between NSCC and other entities, including other FMIs. NSCC states that the overview section would provide a context for the R&W Plan by describing NSCC's business, organizational structure and critical links to other entities. NSCC also states that by providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later sections of the Recovery Plan, and the analysis

[11] DTCC is a user-owned and user-governed holding company and is the parent company of NSCC and its affiliates, The Depository Trust Company (''DTC'') and Fixed Income Clearing Corporation (''FICC'', and, together with NSCC and DTC, the ''Clearing Agencies''). The R&W Plan would describe how corporate support services are provided to NSCC from DTCC and DTCC's other subsidiaries through intercompany agreements under a shared services model.

[12] NSCC states that it uses the term ''credit/market'' risks in the R&W Plan because NSCC monitors its credit exposure to its Members by managing the market risks of each Member's unsettled portfolio through the collection of the Clearing Fund. *See infra* note 21.

[13] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–FICC–2017–007, SR–NSCC–2017–004).

[14] *See id.*

[15] *See supra* note 10.

[16] DTCC operates on a shared services model with respect to NSCC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including NSCC.

of the factors that would be addressed in implementing the Wind-down Plan.

The R&W Plan would provide a description of established links between NSCC and other FMIs, including The Options Clearing Corporation (''OCC''), CDS Clearing and Depository Services Inc. (''CDS''), and DTC. NSCC states that this section of the R&W Plan, which identifies and briefly describes NSCC's established links, is designed to provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The R&W Plan would define the criteria for classifying certain of NSCC's services as ''critical,'' and would identify those critical services and the rationale for their classification. This section of the R&W Plan would provide an analysis of the potential systemic impact from a service disruption, which NSCC states is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of NSCC's critical services to the markets it serves. The criteria that would be used to identify an NSCC service or function as critical would include (1) whether there is a lack of alternative providers or products; (2) whether failure of the service could impact NSCC's ability to perform its central counterparty services; (3) whether failure of the service could impact NSCC's ability to perform its netting services, and the availability of market liquidity; and (4) whether the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks, broker-dealers, and exchanges. The R&W Plan would then list each of those services, functions or activities that NSCC has identified as ''critical'' based on the applicability of these four criteria. The R&W Plan would also include a non-exhaustive list of NSCC services that are not deemed critical.

NSCC states that the evaluation of which services provided by NSCC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. While NSCC's Wind-down Plan would provide for the transfer of all critical services to a transferee in the event NSCC's wind-down is implemented, it would anticipate that any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership, would also be transferred.

The R&W Plan would describe the governance structure of both DTCC and NSCC. This section of the R&W Plan would identify the ownership and governance model of these entities at both the Board and management levels. The R&W Plan would state that the stages of escalation required to manage recovery under the Recovery Plan or to invoke NSCC's wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through NSCC's governance structure. The R&W Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The R&W Plan would identify the Risk Committee of the Board (''Board Risk Committee'') as being responsible for oversight of risk management activities at NSCC, which include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by NSCC as well as oversight of NSCC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[17] The R&W Plan would identify the DTCC Management Risk Committee (''Management Risk Committee'') as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The R&W Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office (''GCRO''), which works with staff within the DTCC Financial Risk Management group. Finally, the R&W Plan would describe the role of the Management Committee, which provides overall direction for all aspects of NSCC's business, technology, and operations and the functional areas that support these activities.

The R&W Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the R&W Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Member, which would be reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer (''CFO'') and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.[18] More generally, the R&W Plan would state that the type of loss and the nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. Both the Recovery Plan and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the R&W Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

2. NSCC Recovery Plan

NSCC states that the Recovery Plan is intended to be a roadmap of those actions that NSCC may employ to monitor and, as needed, stabilize its financial condition. NSCC also states that as each event that could lead to a financial loss could be unique in its circumstances, NSCC proposes that the Recovery Plan would not be prescriptive and would permit NSCC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based. NSCC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that NSCC would employ across evolving stress scenarios that it may face as it transitions through a Crisis Continuum, described below; (2) a description of NSCC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to NSCC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either default losses or non-default losses. In all cases, NSCC states

[17] The DTCC, DTC, NSCC, FICC Risk Committee Charter is *available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.*

[18] The R&W Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event. Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process.

that it would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation to best protect NSCC, Members, and the markets in which it operates.

(i) Managing Member Default Losses and Liquidity Needs Through the Crisis Continuum

The Recovery Plan would describe the risk management surveillance, tools, and governance that NSCC may employ across an increasing stress environment, which is referred to as the Crisis Continuum. This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stress market phase, (3) a phase commencing with NSCC's decision to cease to act for a Member or Affiliated Family of Members [19] (referred to in the R&W Plan as the ''Member default phase''), and (4) a recovery phase. In the R&W Plan, the term ''cease to act'' and the events that may lead to such decision are used within the context of Rule 46 of the Rules.[20] Further, the R&W Plan would, for purposes of the R&W Plan, use the following terms: (1) ''Member default'' to refer to the event or events that precipitate NSCC ceasing to act for a Member or an Affiliated Family; (2) ''Defaulting Member'' to refer to a Member for which NSCC has ceased to act; and (3) ''Member Default Losses'' to refer to losses that arise out of or relate to the Member default (including any losses that arise from liquidation of that Member's portfolio), and to distinguish such losses from those that arise out of the business or other events not related to a Member default, which are separately addressed in the R&W Plan.

NSCC states that the Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing NSCC's ongoing management of credit, market, and liquidity risk, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. NSCC also states that the Recovery Plan would discuss the management of credit/market risk and liquidity exposures together because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. NSCC states that it manages these risk exposures collectively to limit their overall impact on NSCC and its membership. NSCC states that as part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[21] NSCC states that it manages its liquidity risks with an objective of maintaining sufficient resources to be able to fulfill obligations that have been guaranteed by NSCC in the event of a Member default that presents the largest aggregate liquidity exposure to NSCC over the settlement cycle.[22]

The Recovery Plan would outline the metrics and indicators that NSCC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. NSCC states that the Recovery Plan is designed to make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that NSCC would retain the flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Member default, in accordance with the Rules. Therefore, NSCC states that the Recovery Plan would both provide NSCC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that NSCC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of NSCC during a period of stress.

The stable market phase of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include (1) routine monitoring of margin adequacy through daily review of back testing and stress testing results that review the adequacy of NSCC's margin calculations, and escalation of those results to internal and Board committees; [23] and (2) routine monitoring of liquidity adequacy through review of daily liquidity studies that measure sufficiency of available liquidity resources to meet cash settlement obligations of the Member that would generate the largest aggregate payment obligation.[24]

The Recovery Plan would describe some of the indicators of the stress market phase of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Member default would be imminent. Within the description of this phase, the Recovery Plan would provide that NSCC may take targeted, routine risk management measures as necessary and as permitted by the Rules.

Within the Member default phase of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that NSCC would follow in the event of a Member default and any decision by NSCC to cease to act for that Member.[25] The Recovery Plan would provide that the objectives of NSCC's actions upon a Member or Affiliated Family default are to (1) minimize losses and market exposure of

[19] The R&W Plan would define an Affiliated Family of Members as a number of affiliated entities that are all Members of NSCC.

[20] *See* Rule 46 (Restrictions on Access to Services), *supra* note 10.

[21] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), *supra* note 10. NSCC states that because it does not maintain a guaranty fund separate and apart from the Clearing Fund it collects from Members, NSCC monitors its credit exposure to its Members by managing the market risks of each Member's unsettled portfolio through the collection of the Clearing Fund. The aggregate of all Members' Required Fund Deposits comprises the Clearing Fund that represents NSCC's prefunded resources to address uncovered loss exposures, as provided for in Rule 4 (Clearing Fund). Therefore, NSCC states that its market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' *See* 17 CFR 240.17Ad–22(e)(4).

[22] NSCC's liquidity risk management strategy, including the manner in which NSCC utilizes its liquidity tools, is described in the Clearing Agency Liquidity Risk Management Framework. *See* Securities Exchange Act Release No. 82377 (December 21, 2017), 82 FR 61617 (December 28, 2017) (SR–DTC–2017–004, SR–FICC–2017–008, SR–NSCC–2017–005).

[23] NSCC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). *See* Securities Exchange Act Release No. 82638 (December 19, 2017), 82 FR 61082 (December 26, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006).

[24] *See supra* note 22 (concerning NSCC's liquidity risk management strategy).

[25] *See* Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) and Rule 46 (Restrictions on Access to Services), *supra* note 10.

the affected Members and NSCC's non-Defaulting Members; and (2) to the extent practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. Management of liquidity risk through this phase would involve ongoing monitoring of the adequacy of NSCC's liquidity resources, and the Recovery Plan would identify certain actions NSCC may deploy as it deems necessary to mitigate a potential liquidity shortfall. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

The Recovery Plan would also identify financial resources available to NSCC, pursuant to the Rules, to address losses arising out of a Member default. Specifically, Rule 4 (Clearing Fund) provides that losses remaining after application of the Defaulting Member's resources be satisfied first by applying a Corporate Contribution, and then, if necessary, by allocating remaining losses among the membership in accordance with Rule 4 (Clearing Fund).[26]

In order to provide for an effective and timely recovery, the Recovery Plan would describe the period of time that would occur near the end of the Member default phase, during which NSCC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase (referred to in the R&W Plan as the Recovery Corridor). The Recovery Plan would then describe the recovery phase of the Crisis Continuum, which would begin on the date that NSCC issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period.[27] The recovery phase would describe actions that NSCC may take to avoid entering into a wind down of its business.

NSCC states that it expects that significant deterioration of liquidity resources would cause it to enter the Recovery Corridor. Therefore, the R&W Plan would describe the actions NSCC may take aimed at replenishing those resources. Throughout the Recovery Corridor, NSCC would monitor the adequacy of its resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain corridor indicator metrics.

NSCC states that the majority of the corridor indicators, as identified in the Recovery Plan, relate directly to conditions that may require NSCC to adjust its strategy for hedging and liquidating a Defaulting Member's portfolio, and any such changes would include an assessment of the status of the corridor indicators. For each corridor indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) Corridor Actions, which are steps that may be taken to improve the status of the indicator,[28] as well as management escalations required to authorize those steps. NSCC states that because NSCC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the corridor indicators. Therefore, NSCC states that these metrics were chosen based on the business judgment of NSCC management.

The Recovery Plan would also describe the reporting and escalation of the status of the corridor indicators throughout the Recovery Corridor. Significant deterioration of a corridor indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. NSCC management would review the corridor indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Member defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that NSCC may remain in the Recovery Corridor between one day and two weeks. NSCC states that this estimate is based on historical data observed in past Member defaults, the results of simulations of Member defaults, and periodic liquidity analyses conducted by NSCC. NSCC states that the actual length of a Recovery Corridor would vary based on actual market conditions observed at the time, and NSCC would expect the Recovery Corridor to be shorter in market conditions of increased stress.

The Recovery Plan would outline steps by which NSCC may allocate its losses, which would occur when and in the order provided in Rule 4 (Clearing Fund).[29] The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of NSCC's liquidity resources following a Member default, and would provide that these tools may be used as appropriate during the Crisis Continuum to address liquidity shortfalls if they arise. NSCC states that the goal in managing NSCC's qualified liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders of liquidity in a timely manner. Additional voluntary or uncommitted tools to address potential liquidity shortfalls, which may supplement NSCC's other liquid resources described herein, would also be identified in the Recovery Plan. The Recovery Plan would state that, due to the extreme nature of a stress event that would cause NSCC to consider the use of these liquidity tools, the availability and capacity of these liquidity tools, and the willingness of counterparties to lend, cannot be accurately predicted and are dependent on the circumstances of the applicable stress period, including market price volatility, actual or perceived disruptions in financial markets, the costs to NSCC of utilizing these tools, and any potential impact on NSCC's credit rating.

The Recovery Plan would state that NSCC will have entered the recovery phase on the date that it issues the first

[26] Rule 4 (Clearing Fund) defines the amount NSCC would contribute to address a loss resulting from either a Member default or a non-default event as the Corporate Contribution. This amount is 50 percent of the General Business Risk Capital Requirement, which is calculated pursuant to the Capital Policy and which NSCC states is an amount sufficient to cover potential general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, in an effort to comply with Rule 17Ad–22(e)(15) under the Act. *See supra* note 13 (concerning the Capital Policy); 17 CFR 240.17Ad–22(e)(15).

[27] As provided for in Rule 4 (Clearing Fund), the ''Event Period'' is the 10 Business Days beginning on (i) with respect to a Member default, the day on which NSCC notifies Members that it has ceased to act for a Member under the Rules, or (ii) with respect to a non-default loss, the day that NSCC notifies Members of the determination by the Board that there is a non-default loss event. Rule 4 (Clearing Fund) defines a ''round'' as a series of loss allocations relating to an Event Period, and provides that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the Loss Allocation Caps of those Members included in the round. *See* Rule 4 (Clearing Fund), *supra* note 10.

[28] The Corridor Actions that would be identified in the R&W Plan are designed to be indicative, but not prescriptive; therefore, if NSCC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the R&W Plan for the Corridor Indicator to which the action relates.

[29] *See supra* note 10.

Loss Allocation Notice of the second loss allocation round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, NSCC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered.

The Recovery Plan would describe governance for the actions and tools that may be employed within each phase of the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the various indicators and metrics applicable to that phase of the Crisis Continuum, and would follow the relevant escalation protocols that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Member, pursuant to the Rules, and around the management and oversight of the subsequent liquidation of the Defaulting Member's portfolio. The Recovery Plan would state that, overall, NSCC would retain flexibility in accordance with the Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best protect NSCC and the Members, and to meet the primary objectives, throughout the Crisis Continuum, of minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

(ii) Non-Default Losses

The Recovery Plan would outline how NSCC may address losses that result from events other than a Member default. While these matters are addressed in greater detail in other documents, this section of the R&W Plan would provide a roadmap to those documents and an outline for NSCC's approach to monitoring and managing losses that could result from a non-default event. The R&W Plan would first identify some of the risks NSCC faces that could lead to these losses, which include, for example, (1) the business and profit/loss risks of unexpected declines in revenue or growth of expenses; (2) the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and (3) custody or investment risks that could lead to financial losses. The Recovery Plan would describe NSCC's overall strategy for the management of these risks, which includes a ''three lines of defense'' approach to risk management that allows for comprehensive management of risk across the organization.[30] The Recovery Plan would also describe NSCC's approach to financial risk and capital management. The R&W Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow NSCC to effectively identify, monitor, and manage risks of non-default losses.

The R&W Plan would identify the two categories of financial resources NSCC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,[31] (b) the Corporate Contribution,[32] and (c) other amounts held in excess of NSCC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of Rule 4 (Clearing Fund).[33]

The R&W Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.[34] Finally the R&W Plan would discuss how NSCC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the loss or liability exceeds NSCC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a Declared Non-Default Loss Event pursuant to Rule 4 (Clearing Fund).[35]

The R&W Plan would also describe proposed Rule 60 (Market Disruption and Force Majeure), which NSCC is proposing to adopt in the Rules. NSCC states that this Proposed Rule is designed to provide transparency around how NSCC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a Market Disruption Event and the governance around a determination that such an event has occurred. The Proposed Rule would also describe NSCC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable.

The R&W Plan would describe the interaction between the Proposed Rule and NSCC's existing processes and procedures addressing business continuity management and disaster recovery (generally, the ''BCM/DR procedures''). NSCC states that the intent is to make clear that the Proposed Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to NSCC and not necessarily addressed by the BCM/DR procedures. Finally, the R&W Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a time limit on its application. However, the R&W Plan would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. NSCC states that, overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

[30] NSCC states that the ''three lines of defense'' approach to risk management includes (1) a first line of defense comprised of the various business lines and functional units that support the products and services offered by NSCC; (2) a second line of defense comprised of control functions that support NSCC, including the risk management, legal and compliance areas; and (3) a third line of defense, which is performed by an internal audit group. The Clearing Agency Risk Management Framework includes a description of this ''three lines of defense'' approach to risk management, and addresses how NSCC comprehensively manages various risks, including operational, general business, investment, custody, and other risks that arise in or are borne by it. Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR–DTC–2017–013, SR–FICC–2017–016, SR–NSCC–2017–012). The Clearing Agency Operational Risk Management Framework describes the manner in which NSCC manages operational risks, as defined therein. Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR–DTC–2017–014, SR–FICC–2017–017, SR–NSCC–2017–013).

[31] *See supra* note 26.

[32] *See supra* note 26.

[33] *See supra* note 10.

[34] *See supra* note 13 (concerning the Capital Policy).

[35] *See supra* note 10.

(iii) Recovery Tool Characteristics

The Recovery Plan would describe NSCC's evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide incentives to Members and minimize negative impact on Members and the financial system.

3. NSCC Wind-Down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of NSCC if the use of the recovery tools described in the Recovery Plan does not successfully return NSCC to financial viability. NSCC states that while such event is extremely unlikely given the comprehensive nature of the recovery tools, NSCC is proposing a wind-down strategy that provides for (1) the transfer of NSCC's business, assets, and membership to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Bankruptcy Code,[36] and (3) after effectuating this transfer, NSCC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. NSCC states that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that NSCC's critical services will be available to the market as long as there are Members in good standing, and (2) minimizing disruption to the operations of Members and financial markets generally that might be caused by NSCC's failure.

In describing the transfer approach to NSCC's Wind-down Plan, the R&W Plan would identify the factors that NSCC considered in developing this approach, including the fact that NSCC does not own material assets that are unrelated to its clearance and settlement activities. Therefore, NSCC states that a business reorganization or ''bail-in'' of debt approach would be unlikely to mitigate significant losses. Additionally, NSCC states that the proposed approach was developed in consideration of its critical and unique position in the U.S. markets, which precludes any approach that would cause NSCC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of NSCC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down NSCC as the Runway Period. NSCC states that this period would follow the implementation of any recovery tools, as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for NSCC to realize a loss sufficient to cause it to be unable to effectuate settlements and repay its obligations.[37] The Wind-down Plan would identify some of the indicators that NSCC has entered the Runway Period.

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. As described in the R&W Plan, NSCC states that this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of NSCC and the Members to avoid actions that might undermine NSCC's recovery efforts. Additionally, NSCC states that this approach takes into account the characteristics of NSCC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of NSCC's recovery tools.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of NSCC's critical services, business, assets, and membership, and the assignment of NSCC's links with other FMIs, to another legal entity that is legally, financially, and operationally able to provide NSCC's critical services to entities that wish to continue their membership following the transfer (''Transferee''). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently (''Third Party Transferee''); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC (''Failover Transferee'') to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire NSCC's business. NSCC would seek to identify the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Bankruptcy Code.[38] The Wind-down Plan would anticipate that the transfer to the Transferee be effected in connection with proceedings under Chapter 11 of the U.S. Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, with the intent that the transfer be free and clear of claims against, and interests in, NSCC, except to the extent expressly provided in the court's order.[39]

NSCC states that in order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, NSCC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership. Following the transfer, the Wind-down Plan would anticipate that the Transferee and its continuing membership would determine whether to continue to provide any transferred non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. NSCC's Wind-down Plan would anticipate that the Transferee would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to NSCC, including staffing, infrastructure and operational support. The Wind-down Plan would also anticipate the assignment of NSCC's link arrangements, including those with DTC, CDS and OCC, described above, to the Transferee.[40] The Wind-down Plan would provide that Members' open positions existing prior to the effective time of the transfer would be addressed by the provisions of the proposed Wind-down Rule and Corporation Default Rule, as defined and described below, and that the Transferee would not

[36] 11 U.S.C. 101 *et seq.*

[37] The Wind-down Plan would state that, given NSCC's position as a user-governed financial market utility, it is possible that Members might voluntarily elect to provide additional support during the recovery phase leading up to a potential trigger of the Wind-down Plan, but would also be designed to make clear that NSCC cannot predict the willingness of Members to do so.

[38] *See* 11 U.S.C. 101 *et seq.*

[39] *See* 11 U.S.C. 363.

[40] The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by NSCC. However, to the extent the Transferee adopts rules substantially identical to those NSCC has in effect prior to the transfer, NSCC states that the Transferee would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that no Clearing Fund would be transferred to the Transferee, as it is not held in a bankruptcy remote manner and it is the primary prefunded liquidity resource to be accessed in the recovery phase.

acquire any pending or open transactions with the transfer of the business. The Wind-down Plan would anticipate that the Transferee would accept transactions for processing with a trade date from and after the effective time of the transfer.

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of NSCC would involve addressing any residual claims against NSCC through the bankruptcy process and liquidating the legal entity. The Wind-down Plan does not contemplate NSCC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated.

The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of NSCC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of NSCC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) NSCC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether NSCC could safely stabilize the business and protect its value without seeking bankruptcy protection, and NSCC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions NSCC or DTCC may take to prepare for wind-down in the period before NSCC experiences any financial distress, (2) actions NSCC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions NSCC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the R&W Plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to achieve a recovery or orderly wind-down of NSCC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by NSCC's average monthly operating expenses, including adjustments to account for changes to NSCC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of NSCC's critical operations. The estimated wind-down costs would constitute the Recovery/Wind-down Capital Requirement under the Capital Policy.[41] Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.[42]

NSCC states that the R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed Rule 41 (Corporation Default) and proposed Rule 42 (Wind-down of the Corporation), which would be adopted to facilitate the implementation of the Wind-down Plan, as discussed below.

B. Proposed Rules

In connection with the adoption of the R&W Plan, NSCC proposes to adopt the Proposed Rules, each of which is described below. NSCC states that the Proposed Rules are designed to facilitate the execution of the R&W Plan and are designed to provide Members and Limited Members with transparency as to critical aspects of the R&W Plan, particularly as they relate to the rights and responsibilities of both NSCC and Members. NSCC also states that the Proposed Rules are designed to provide a legal basis to these aspects of the R&W Plan.

1. Rule 41 (Corporation Default)

The proposed Rule 41 (''Corporation Default Rule'') would provide a mechanism for the termination, valuation and netting of unsettled, guaranteed Continuous Net Settlement (''CNS'') system[43] transactions in the event NSCC is unable to perform its obligations or otherwise suffers a defined event of default, such as entering insolvency proceedings. NSCC states that the proposed Corporation Default Rule is designed to provide Members with transparency and certainty regarding what would happen if NSCC were to fail (defined in the proposed Rule as a Corporation Default).

The proposed rule would define the events that would constitute a Corporation Default, which would generally include (1) the failure of NSCC to make any undisputed payment or delivery to a Member if such failure is not remedied within seven days after notice of such failure is given to NSCC; (2) NSCC is dissolved; (3) NSCC institutes a proceeding seeking a judgment of insolvency or bankruptcy, or a proceeding is instituted against it seeking a judgment of bankruptcy or insolvency and such judgment is entered; or (4) NSCC seeks or becomes subject to the appointment of a receiver, trustee or similar official pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act[44] for it or for all or substantially all of its assets.

Upon a Corporation Default, the proposed Corporation Default Rule would provide that all unsettled, guaranteed CNS transactions would be terminated and, no later than 45 days from the date on which the event that constitutes a Corporation Default occurred (''Default Date''), the Board would determine a single net amount owed by or to each Member with respect to such transactions pursuant to the valuation procedures set forth in the Proposed Rule. NSCC states that essentially, for each affected position in a CNS Security, the CNS Market Value would be determined by using the Current Market Price for that security as determined in the CNS System as of the close of business on the next Business Day following the Default Date.

NSCC would determine a Net Contract Value for each Member's net unsettled long or short position in a CNS Security by netting the Member's

[41] *See supra* note 13.

[42] *See supra* note 13.

[43] *See* Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), *supra* note 10.

[44] 12 U.S.C. 5381 *et seq.*

(i) contract price for such net position that, as of the Default Date, has not yet passed the Settlement Date, and (ii) the Current Market Price in the CNS System on the Default Date for its fail positions. To determine each Member's CNS Close-out Value, (i) the Net Contract Value for each CUSIP would be subtracted from the CNS Market Value for such CUSIP, and (ii) the resulting difference for all CUSIPs in which the Member had a net long or short position would be summed, and would be netted and offset against any other amounts that may be due to or owing from the Member under the Rules. The proposed Corporation Default Rule would provide for notification to each Member of its CNS Close-out Value, and would also address interpretation of the Rules in relation to certain terms that are defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 (''FDICIA'').[45]

NSCC states that this valuation approach, which is comparable to the approach adopted by other central counterparties, is appropriate for NSCC given the market in which NSCC operates and the volumes of transactions it processes in CNS because it would provide for a common, clear and transparent valuation methodology and price per CUSIP applicable to all affected Members.

2. Rule 42 (Wind-Down of the Corporation)

NSCC states that the proposed Rule 42 (''Wind-down Rule'') is designed to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. NSCC states that the Wind-down Rule is designed to make clear that a wind-down of NSCC's business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of NSCC's services to a Transferee, as described therein. NSCC states that, generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Members, Eligible Limited Members, and Settling Banks (as these terms would be defined in the Wind-down Rule), and NSCC's business, in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

(i) Wind-Down Trigger

First, NSCC states that the Proposed Rule is designed to make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan and in the proposed Wind-down Rule, the Board would initiate the Wind-down Plan if, in the exercise of its business judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore NSCC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of NSCC's business, is in the best interests of NSCC, Members and Limited Members, its shareholders and creditors, and the U.S. financial markets.

(ii) Identification of Critical Services; Designation of Dates and Times for Specific Actions

The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of NSCC's business to a Transferee (''Transfer Time''), (2) the last day that transactions may be submitted to NSCC for processing (''Last Transaction Acceptance Date''), and (3) the last day that transactions submitted to NSCC will be settled (''Last Settlement Date'').

(iii) Treatment of Pending Transactions

The Wind-down Rule would authorize the Board to provide for the settlement of pending transactions prior to the Transfer Time, so long as the Corporation Default Rule has not been triggered. The Board would also have the ability to allow Members to only submit trades that would effectively offset pending positions or provide that transactions will be processed in accordance with special or exception processing procedures. NSCC states that the Proposed Rule is designed to enable these actions in order to facilitate settlement of pending transactions and reduce claims against NSCC that would have to be satisfied after the transfer has been effected. If none of these actions are deemed practicable (or if the Corporation Default Rule has been triggered), then the provisions of the proposed Corporation Default Rule would apply to the treatment of open, pending transactions.

NSCC states that the Proposed Rule is designed to make clear, however, that NSCC would not accept any transactions for processing after the Last Transaction Acceptance Date or which are designated to settle after the Last Settlement Date. Any transactions to be processed and/or settled after the Transfer Time would be required to be submitted to the Transferee, and would not be NSCC's responsibility.

(iv) Notice Provisions

The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, NSCC would provide Members and Limited Members and its regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of NSCC's membership and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of NSCC's business would be effected; (3) the Transfer Time, Last Transaction Acceptance Date, and Last Settlement Date; and (4) identification of Eligible Members and Eligible Limited Members, and the critical and non-critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Members and Non-Eligible Limited Members (as defined in the Proposed Rule), and any non-critical services that would not be included in the transfer. NSCC would also make available the rules and procedures and membership agreements of the Transferee.

(v) Transfer of Membership

The proposed Wind-down Rule would address the expected transfer of NSCC's membership to the Transferee, which NSCC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Therefore, the Wind-down Rule would provide Members, Limited Members and Settling Banks with notice that, in connection with the implementation of the Wind-down Plan and with no further action required by any party, (1) their membership with NSCC would transfer to the Transferee,

[45] 12 U.S.C. 1811 *et seq.*

(2) they would become party to a membership agreement with such Transferee, and (3) they would have all of the rights and be subject to all of the obligations applicable to their membership status under the rules of the Transferee. These provisions would not apply to any Member or Limited Member that is either in default of an obligation to NSCC or has provided notice of its election to withdraw from membership. Further, NSCC states that the proposed Wind-down Rule is designed to make clear that it would not prohibit (1) Members and Limited Members that are not transferred by operation of the Wind-down Rule from applying for membership with the Transferee, or (2) Members, Limited Members, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee.[46]

(vi) Comparability Period

NSCC states that the proposed automatic mechanism for the transfer of NSCC's membership is intended to provide NSCC's membership with continuous access to critical services in the event of NSCC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. The proposed Wind-down Rule would provide that NSCC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from NSCC to the Transferee, for at least a period of time to be agreed upon (''Comparability Period''), the business transferred from NSCC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by NSCC. Specifically, the proposed Wind-down Rule would provide that (1) the rules of the Transferee and terms of membership agreements would be comparable in substance and effect to the analogous Rules and membership agreements of NSCC; (2) the rights and obligations of any Members, Limited Members and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to NSCC; and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which such services were provided by NSCC. NSCC states that the purpose of these provisions and the intended effect of the proposed Wind-down Rule is to facilitate a smooth transition of NSCC's business to a Transferee and to provide that, for at least the Comparability Period, the Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by NSCC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new members of the Transferee.

(vii) Subordination of Claims Provisions and Miscellaneous Matters

The proposed Wind-down Rule would include a provision addressing the subordination of unsecured claims against NSCC of Members and Limited Members who fail to participate in NSCC's recovery efforts (*i.e.,* firms delinquent in their obligations to NSCC or elect to retire from NSCC in order to minimize their obligations with respect to the allocation of losses, pursuant to the Rules). NSCC states that this provision is designed to incentivize Members to participate in NSCC's recovery efforts.[47]

The proposed Wind-down Rule would address other ex-ante matters including provisions providing that Members, Limited Members and Settling Banks (1) will assist and cooperate with NSCC to effectuate the transfer of NSCC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant NSCC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by NSCC pursuant to the Proposed Rule.

NSCC states that the purpose of the limitation of liability is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events. Such limitation of liability would be available only following triggering of the Wind-down Plan. In addition, and as a separate matter, NSCC states that the limitation of liability provides Members with transparency for the unlikely situation when those extraordinary events could occur, as well as supporting the legal framework within which NSCC would take such actions. NSCC states that these provisions, collectively, are designed to enable NSCC to take such acts as the Board determines necessary to effectuate an orderly transfer and wind-down of its business should recovery efforts prove unsuccessful.

3. Rule 60 (Market Disruption and Force Majeure)

The proposed Rule 60 (''Force Majeure Rule'') would address NSCC's authority to take certain actions upon the occurrence, and during the pendency, of a Market Disruption Event, as defined therein. NSCC states that the Proposed Rule is designed to clarify NSCC's ability to take actions to address extraordinary events outside of the control of NSCC and of its membership, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, NSCC would be entitled, during the pendency of a Market Disruption Event, to (1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require Members and Limited Members to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of NSCC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a Market Disruption Event. The proposed Force Majeure Rule would define the governance procedures for how NSCC would determine whether, and how, to implement the provisions of the rule.

A determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to

[46] The Members and Limited Members whose membership is transferred to the Transferee pursuant to the proposed Wind-down Rule would submit transactions to be processed and settled subject to the rules and procedures of the Transferee, including any applicable margin charges or other financial obligations.

[47] Nothing in the proposed Wind-down Rule would seek to prevent a Member, Limited Member or Settling Bank that retired its membership at NSCC from applying for membership with the Transferee. Once its NSCC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

the Commission, and advance consultation with Commission staff, when practicable, including notification when an event is no longer continuing and the relevant actions are terminated. The Proposed Rule would require Members and Limited Members to notify NSCC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require NSCC to notify Members and Limited Members if it has triggered the Proposed Rule and of actions taken or intended to be taken thereunder.

Finally, the Proposed Rule would address other related matters, including a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event. NSCC states that the purpose of the limitation of liability would be similar to the purpose of the analogous provision in the proposed Wind-down Rule, which is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events.

4. Proposed Change to the Rule Numbers

In order to align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies, NSCC proposes to re-number the current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use.

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose 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 and strengthening the liquidity of systemically important financial market utilities.[48]

Section 805(a)(2) of the Clearing Supervision Act[49] authorizes the Commission to prescribe 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. Section 805(b) of the Clearing Supervision Act[50] provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[51] and Section 17A of the Act[52] (''Rule 17Ad–22'').[53] Rule 17Ad–22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[54] Therefore, it is appropriate for the Commission to review proposed changes in advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act[55] and against Rule 17Ad–22.[56]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposed changes in the Advance Notice are designed to help NSCC promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. As described above, the R&W Plan, generally, would help NSCC promote robust risk management and reduce systemic risks by providing NSCC with a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Specifically, the Recovery Plan would provide a roadmap that would identify a number of triggers for the potential application of a number of available recovery tools. Identifying triggers for the potential application of recovery tools would help promote robust risk management and reduce systemic risks by better enabling NSCC to more promptly determine when and how it may need to manage a significant stress event, and, as needed, stabilize its financial condition.

Similarly, the Force Majeure Rule is designed to provide a roadmap to address extraordinary events that may occur outside of NSCC's control. Specifically, the Force Majeure Rule would define a Market Disruption Event and provide governance around determining when such an event has occurred. The Force Majeure Rule also would describe NSCC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of NSCC's services, if practicable. By defining a Market Disruption Event and providing such governance and authority, the Commission believes that the Force Majeure Rule also would help promote robust risk management and reduce systemic risks by improving NSCC's ability to identify and manage a force majeure event, and, as needed, to stabilize its financial condition so that NSCC can continue to operate and act as a source of stability for the financial markets it serves.

The Commission believes that the Recovery Plan and the Force Majeure Rule reflect an approach designed to allow for a more considered and comprehensive evaluation by NSCC of a stressed market situation and the ways in which NSCC could apply available recovery tools in a manner intended to minimize the potential negative effects of the stress situation for NSCC, its Members, and the broader financial system. Therefore, the Commission believes that the Recovery Plan and the Force Majeure Rule would help promote robust risk management at NSCC and, thus, reduce systemic risks by establishing a means for NSCC to best determine the most appropriate way to address such stress situations in an effective manner.

The Commission believes that the R&W Plan, generally, would help NSCC promote safety and soundness and support the stability of the broader financial system by providing a roadmap to wind-down that is designed to ensure the availability of NSCC's critical services to the marketplace, while reducing disruption to the operations of Members and financial markets that might be caused by NSCC's failure. Specifically, as described above, the Wind-down Plan, as facilitated by the Wind-down Rule and the Corporation Default Rule, would provide for the wind-down of NSCC's business and transfer of membership and critical services if the recovery tools do not successfully return NSCC to financial viability. Accordingly, critical services, such as services that lack alternative providers or products, services that the failure of which could impact the availability of market

[48] *See* 12 U.S.C. 5461(b).

[49] 12 U.S.C. 5464(a)(2).

[50] 12 U.S.C. 5464(b).

[51] 12 U.S.C. 5464(a)(2).

[52] 15 U.S.C. 78q–1.

[53] *See* 17 CFR 240.17Ad–22.

[54] *Id.*

[55] 12 U.S.C. 5464(b).

[56] *See* 17 CFR 240.17Ad–22.

liquidity, and services that are interconnected with other participants and processes within the U.S. financial system would be able to continue in an orderly manner while NSCC is seeking to wind-down its services. By designing the Wind-down Plan and these Proposed Rules to enable the continuity of NSCC's critical services and membership in an orderly manner while NSCC is seeking to wind-down its services, the Commission believes these proposed changes would help NSCC promote safety and soundness and support stability in the broader financial system in the event the Wind-down Plan is implemented.

As described above, NSCC proposes to re-number current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use, to align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies. This proposed change would help create ease of reference to and heightened transparency of such rules, particularly for Members and for other clearing agencies and other market infrastructure that have links to, or reliance upon, the critical services offered by NSCC. Enhanced access to and transparency of these rules would therefore assist such parties in understanding, planning for, and reacting in an orderly manner to, the implementation by NSCC of the R&W Plan. Therefore, the Commission believes that NSCC's proposed change to the numbering of its Rules would help support the stability of the broader financial system.

By better enabling NSCC to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, as described above, the Commission believes that the proposed changes in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[57]

B. Consistency With Rules 17Ad–22(e)(2)(i), (iii), and (v) Under the Act

Rule 17Ad–22(e)(2)(i) under the Act requires a covered clearing agency[58] to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[59] Rule 17Ad–22(e)(2)(iii) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that support the public interest requirements in Section 17A of the Act[60] applicable to clearing agencies, and the objectives of owners and participants.[61] Rule 17Ad–22(e)(2)(v) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.[62]

As described above, the R&W Plan is designed to identify clear lines of responsibility concerning the R&W Plan including (1) the ongoing development of the R&W Plan; (2) ongoing maintenance of the R&W Plan; (3) reviews and approval of the R&W Plan; and (4) the functioning and implementation of the R&W Plan. As described above, the R&R Team, which reports to the Management Committee, is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. Meanwhile, the Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and also would review and approve any changes that are proposed to the R&W Plan outside of the biennial review. Moreover, the R&W Plan would state the stages of escalation required to manage recovery under the Recovery Plan or to invoke NSCC's wind-down under the Wind-down Plan, which would range from relevant business line managers up to the Board. The R&W Plan would identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The R&W Plan also would specify the process NSCC would take to receive input from various parties at NSCC, including management committees and the Board.

In considering the above, the Commission believes that the R&W Plan would help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent because it would specify lines of control. The Commission also believes that the R&W Plan would help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that support the public interest requirements in Section 17A of the Act[63] applicable to clearing agencies, and the objectives of owners and participants because the R&W Plan specifies the process NSCC would take to receive input from various NSCC stakeholders. In addition, the Commission believes that the R&W Plan would help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility because it specifies who is responsible for the ongoing development, maintenance, reviews, approval, functioning, and implementation of the R&W Plan.

Therefore, the Commission believes that the R&W Plan is consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v) under the Act.[64]

C. Consistency With Rule 17Ad–22(e)(3)(ii) Under the Act

Rule 17Ad–22(e)(3)(ii) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[65]

As described above, the R&W Plan's Recovery Plan provides a plan for NSCC's recovery necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses by defining the risk management activities, stress conditions and

[57] 12 U.S.C. 5464(b).

[58] A ''covered clearing agency'' means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1 *et seq.*) that is designated systemically important by the Financial Stability Oversight Counsel (''FSOC'') pursuant to the Clearing Supervision Act (12 U.S.C. 5461 *et seq.*). *See* 17 CFR 240.17Ad–22(a)(5)–(6). On July 18, 2012, FSOC designated NSCC as systemically important. U.S. Department of the Treasury, ''FSOC Makes First Designations in Effort to Protect Against Future Financial Crises,'' *available at https://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx.* Therefore, NSCC is a covered clearing agency.

[59] 17 CFR 240.17Ad–22(e)(2)(i).

[60] 15 U.S.C. 78q–1.

[61] 17 CFR 240.17Ad–22(e)(2)(iii).

[62] 17 CFR 240.17Ad–22(e)(2)(v).

[63] 15 U.S.C. 78q–1.

[64] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[65] 17 CFR 240.17Ad–22(e)(3)(ii).

indicators, and tools that NSCC may use to address stress scenarios that could eventually prevent NSCC from being able to provide its critical services as a going concern. More specifically, through the framework of the Crisis Continuum, which identifies tools that can be employed to mitigate losses and mitigate or minimize liquidity needs as the market environment becomes increasingly stressed, the Recovery Plan would identify measures that NSCC may take to manage risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan also would address NSCC's management of general business risks and other non-default risks that could lead to losses by identifying potential non-default losses and the resources available to NSCC to address such losses, including recovery triggers and tools to mitigate such losses. Therefore, the Commission believes that the R&W Plan's Recovery Plan helps NSCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by NSCC, which includes a recovery plan necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

As described above, the R&W Plan's Wind-down Plan provides a plan for orderly wind-down of NSCC, which would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. Once triggered, the Wind-down Plan sets forth mechanisms for the transfer of NSCC's membership and business, and it is designed to maintain continued access to NSCC's critical services and to minimize market impact of the transfer while NSCC is seeking to ultimately wind-down its services. Specifically, the Wind-down Plan would provide for the transfer of NSCC's business, assets, and membership to another legal entity with such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Bankruptcy Code.[66] After effectuating this transfer, NSCC would liquidate any remaining assets in an orderly manner in bankruptcy proceedings.

Although the Commission is not opining on the Wind-down Plan's consistency with the U.S. Bankruptcy Code, in reviewing the proposed changes, the Commission believes that NSCC's intent to use bankruptcy proceedings to achieve an orderly liquidation of assets after any transfer of NSCC's business appears reasonable, in light of the provisions of the Bankruptcy Code that address the liquidation and distribution of a debtor's property among creditors and interest holders.[67] Under many circumstances, Section 363 of the Bankruptcy Code provides for the sale of property ''free and clear of any interest in such property of an entity other than the estate[.]''[68] The Commission believes that NSCC's analysis regarding the applicability of these provisions, while not free from doubt, presents a reasonable approach to liquidation in light of the circumstances and the available alternatives.[69] Therefore, the Commission believes that the R&W Plan's Wind-down Plan helps NSCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by NSCC, which includes a wind-down plan necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

Therefore, the Commission believes that the R&W Plan is consistent with Rule 17Ad–22(e)(3)(ii) under the Act.[70]

D. Consistency With Rules 17Ad–22(e)(15)(i)–(ii) Under the Act

Rule 17Ad–22(e)(15)(i) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.[71] Rule 17Ad–22(e)(15)(ii) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad–22(e)(3)(ii) under the Act,[72] discussed above.[73]

As discussed above, NSCC's Capital Policy is designed to address how NSCC holds LNA in compliance with these requirements,[74] while the Wind-down Plan would include an analysis to estimate the amount of time and cost to achieve a recovery or orderly wind-down of NSCC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan also would provide that the estimate would be the Recovery/Wind-down Capital Requirement under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the amount of LNA that NSCC plans to hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, the Commission believes that the R&W Plan is consistent with Rules 17Ad–22(e)(15)(i) and (ii) under the Act.[75]

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[76] that the Commission *does not object* to advance notice SR–

[66] 11 U.S.C. 101 *et seq.*

[67] *See, e.g.,* 11 U.S.C. 363, 726, and 1129(a)(7).

[68] *See* 11 U.S.C. 363(f).

[69] The Wind-down Plan would identify certain factors the Board may consider in evaluating alternatives, which would include, for example, whether NSCC could safely stabilize the business and protect its value without seeking bankruptcy protection, and NSCC's ability to continue to meet its regulatory requirements.

[70] 17 CFR 240.17Ad–22(e)(3)(ii).

[71] 17 CFR 240.17Ad–22(e)(15)(i).

[72] 17 CFR 240.17Ad–22(e)(3)(ii).

[73] 17 CFR 240.17Ad–22(e)(15)(ii).

[74] *Supra* note 13.

[75] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[76] 12 U.S.C. 5465(e)(1)(I).

NSCC–2017–805, as modified by Amendment No. 1, and that NSCC is *authorized* to implement the proposal as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–NSCC–2017–017, as modified by Amendment No. 1, whichever is later.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18869 Filed 8–29–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83937; File No. SR–NSCC–2018–004]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Terminate the Commission Billing Service and the Commission Billing Limited Membership

August 24, 2018.

On July 13, 2018, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2018–004, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on July 24, 2018.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change would amend the Rules and Procedures of NSCC (''Rules'') [4] to terminate the Commission Billing service. Currently, the Commission Billing service facilitates the payment of commissions between NSCC's members (''Members'') and floor brokerage firms [5] that charge commissions (''Commission Billing Members'').[6] Commission Billing Members hold a limited membership at NSCC that allows such firms to participate in NSCC solely for the collection of commissions.[7] NSCC tabulates all commission payment records received on a monthly basis, and either sends amounts to The Depository Trust Company (''DTC'') for payment (for Members that are also Participants of DTC) or processes payments through the Automated Clearing House.[8]

NSCC proposes to terminate the Commission Billing service and the associated membership category.[9] NSCC states that over the years the volumes of trades handled by floor brokerage firms have decreased, leading to a significant decrease in the use of this service.[10] NSCC states that the reduced volumes of transactions have caused this service to be provided at a financial loss to NSCC.[11] Additionally, NSCC states that due to the use of legacy systems that lack automation and support features, the service continues to rely on manual processes and requires personnel involvement, which can lead to errors.[12]

NSCC would implement the proposed changes no later than November 30, 2018.[13]

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization.[14] The Commission believes the proposal is consistent with Act, specifically Section 17A(b)(3)(F) of the Act and Rules 17Ad–22(e)(21)(iv) under the Act.[15]

A. Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency, such as NSCC, be designed to promote the prompt and accurate clearance and settlement of securities transactions.[16]

As described above, the proposed rule change would terminate the Commission Billing service and the associated membership category. The proposed change is designed to eliminate an underutilized service that takes up NSCC resources (through its reliance on manual operations and by operating at a financial loss) and is no longer relied on by Members or the industry. As NSCC would no longer need to divert resources to the service, the proposed rule change would afford NSCC the opportunity to redeploy those resources in a manner that could better support NSCC's other, more utilized clearance and settlement services. Accordingly, the Commission finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[17]

B. Rule 17Ad–22(e)(21)(iv) Under the Act

Rule 17Ad–22(e)(21)(iv) under the Act requires a covered clearing agency [18] to establish, implement, maintain, and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.[19] As described above, use of the Commission Billing service has significantly decreased, as the industry has change and the service no longer provides the same value that it had historically. As a result, NSCC currently operates the service at a financial loss. As such, NSCC has determined that it would be more efficient and effective in meeting the requirements of its Members and the market NSCC serves to eliminate the service. In doing so, NSCC would be able to redirect the resources being consumed by the Commission Billing service to other, more needed services. Therefore, the Commission finds that the proposed rule change is designed to help ensure that NSCC is efficient and effective in meeting the requirements of its participants,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 83666 (July 18, 2018), 83 FR 35041 (July 24, 2018) (SR–NSCC–2018–004) (''Notice'').

[4] *Available at http://www.dtcc.com/legal/rules-and-procedures.*

[5] Floor brokerage firms are members of the New York Stock Exchange (''NYSE'') and NYSE American. Floor brokerage firms execute trades on behalf of their clients for a commission.

[6] Notice, 83 FR at 35041.

[7] *Id.*

[8] Notice, 83 FR at 35041–42.

[9] Notice, 83 FR at 35042.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2)(C).

[15] 15 U.S.C. 78q–1(b)(3)(F); 17 CFR 240.17Ad–22(e)(21)(iv).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] *Id.*

[18] A ''covered clearing agency'' means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1 *et seq.*) that is designated systemically important by the Financial Stability Oversight Counsel (''FSOC'') pursuant to the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*). *See* 17 CFR 240.17Ad–22(a)(5)–(6). On July 18, 2012, FSOC designated NSCC as systemically important. U.S. Department of the Treasury, ''FSOC Makes First Designations in Effort to Protect Against Future Financial Crises,'' *available at https://www.treasury.gov/press-center/press-releases/Pages/tg1645.asp.* Therefore, NSCC is a covered clearing agency.

[19] 17 CFR 240.17Ad–22(e)(21)(iv).

consistent with Rule 17Ad–22(e)(21)(iv) under the Act.[20]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act [21] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–NSCC–2018–004 be, and hereby is, *approved.*[22]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18782 Filed 8–29–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83952; File No. SR–NSCC–2017–806]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection to an Advance Notice, as Modified by Amendment No. 1, To Amend the Loss Allocation Rules and Make Other Changes

August 27, 2018.

On December 18, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–NSCC–2017–806 pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act'') [2] to amend NSCC's loss allocation rules, accelerate the return of certain deposits to former Members, and make other conforming and technical changes.[3] The advance notice was published for comment in the **Federal Register** on January 30, 2018.[4] In that publication, the Commission also extended the review period of the advance notice for an additional 60 days, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[5] On April 10, 2018, the Commission required additional information from NSCC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,[6] which tolled the Commission's period of review of the advance notice until 60 days from the date the information required by the Commission was received by the Commission.[7] On June 28, 2018, NSCC filed Amendment No. 1 to the advance notice to amend and replace in its entirety the advance notice as originally filed on December 18, 2017.[8] On July 6, 2018, the Commission received a response to its request for additional information in consideration of the advance notice, which, in turn, added a further 60 days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act.[9] The Commission did not receive any comments. This publication serves as notice that the Commission does not object to the proposed changes set forth in the advance notice, as modified by Amendment No. 1 (hereinafter, ''Advance Notice'').

I. Description of the Advance Notice

The Advance Notice consists of proposed changes to NSCC's Rules and Procedures (''Rules'') [10] in order to (1) modify the loss allocation process; (2) align NSCC's loss allocation rules with the three clearing agencies of The Depository Trust & Clearing Corporation (''DTCC'')—The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC'') (including the Government Securities Division (''FICC/GSD'') and the Mortgage-Backed Securities Division (''FICC/MBSD'')), and NSCC (collectively, the ''DTCC Clearing Agencies''); [11] (3) reduce the time within which NSCC is required to return a former Member's Clearing Fund deposit; and (4) make conforming and technical changes. Each of these proposed changes is described below. A detailed description of the specific rule text changes proposed in this Advance

[20] *Id.*

[21] 15 U.S.C. 78q–1.

[22] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On December 18, 2017, NSCC filed the advance notice as proposed rule change SR–NSCC–2017–018 with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on January 8, 2018. Securities Exchange Act Release No. 82428 (January 2, 2018), 83 FR 897 (January 8, 2018) (SR–NSCC–2017–018). On February 8, 2018, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82670 (February 8, 2018), 83 FR 6626 (February 14, 2018) (SR–DTC–2017–022, SR–FICC–2017–022, SR–NSCC–2017–018). On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82910 (March 20, 2018), 83 FR 12968 (March 26, 2018) (SR–NSCC–2017–018). On June 25, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 83510 (June 25, 2018), 83 FR 30791 (June 29, 2018) (SR–DTC–2017–022, SR–FICC–2017–022, SR–NSCC–2017–018). On June 28, 2018, NSCC filed Amendment No. 1 to the Proposed Rule Change, which was published in the **Federal Register** on July 19, 2018. Securities Exchange Act Release No. 83633 (July 13, 2018), 83 FR 34227 (July 19, 2018) (SR–NSCC–2017–018). NSCC submitted a courtesy copy of Amendment No. 1 to the Proposed Rule Change through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the Proposed Rule Change has been publicly available on the Commission's website at *https://www.sec.gov/rules/sro/nscc.htm* since June 29, 2018. The Commission did not receive any comments. The proposal, as set forth in both the advance notice and the Proposed Rule Change, each as modified by Amendments No. 1, shall not take effect until all required regulatory actions are completed.

[4] Securities Exchange Act Release No. 82584 (January 24, 2018), 83 FR 4377 (January 30, 2018) (SR–NSCC–2017–806) (''Notice'').

[5] Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H). The Commission found that the advance notice raised complex issues and, accordingly, extended the review period of the advance notice for an additional 60 days until April 17, 2018. *See* Notice, *supra* note 4.

[6] 12 U.S.C. 5465(e)(1)(D).

[7] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); *see* 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/rules/sro/nscc-an.htm.*

[8] Securities Exchange Act Release No. 83748 (July 31, 2018), 83 FR 38375 (August 6, 2018) (SR–NSCC–2017–806) (''Notice of Amendment No. 1''). NSCC submitted a courtesy copy of Amendment No. 1 to the advance notice through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the advance notice has been publicly available on the Commission's website at *https://www.sec.gov/rules/sro/nscc-an.htm* since June 29, 2018.

[9] 12 U.S.C. 5465(e)(1)(E) and (G); *see* 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/rules/sro/nscc-an.htm.*

[10] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[11] DTCC is a user-owned and user-governed holding company and is the parent company of DTC, FICC, and NSCC. DTCC operates on a shared services model with respect to the DTCC Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a DTCC Clearing Agency.

Notice can be found in the Notice of Amendment No. 1.[12]

A. Changes to the Loss Allocation Process

NSCC's loss allocation rules currently provide that in the event NSCC ceases to act [13] for a Member, the amount on deposit to the Clearing Fund from the defaulting Member, along with any other resources of, or attributable to, the defaulting Member that NSCC may access under the Rules, are the first source of funds NSCC would use to cover any losses that may result from the closeout of the defaulting Member's guaranteed positions. If these amounts are not sufficient to cover all losses incurred, then NSCC will apply the following available resources, in the following order: (1) As provided in Addendum E of the Rules, NSCC's corporate contribution of at least 25 percent of NSCC's retained earnings existing at the time of a Member impairment, or such greater amount as the Board of Directors may determine; and (2) if a loss still remains, as provided in Rule 4, the required Clearing Fund deposits of non-defaulting Members on the date of default.

Pursuant to current Section 5 of Rule 4, if, as a result of applying the Clearing Fund deposit of a Member, the Member's actual Clearing Fund deposit is less than its Required Deposit, it will be required to eliminate such deficiency in order to satisfy its Required Deposit amount. Pursuant to current Section 4 of Rule 4, Members can also be assessed for non-default losses incident to the operation of the clearance and settlement business of NSCC. Pursuant to current Section 8 of Rule 4, Members may withdraw from membership within specified timeframes after a loss allocation charge to limit their obligation for future assessments.

NSCC proposes to change the manner in which each of the aspects of the loss allocation process described above would be employed. The proposal would clarify or adjust certain elements and introduce certain new loss allocation concepts, as further discussed below. In addition, the proposal would address the loss allocation process as it relates to losses arising from or relating to multiple default or non-default events in a short period of time, also as described below.

NSCC proposes six key changes to enhance NSCC's loss allocation process. Specifically, NSCC proposes to make changes regarding (1) the Corporate Contribution, (2) the Event Period, (3) the loss allocation round and notice, (4) the look-back period, (5) the loss allocation withdrawal notice and cap, and (6) the governance around non-default losses, each of which is discussed below.

(1) Corporate Contribution

Addendum E of the Rules currently provides that NSCC will contribute no less than 25 percent of its retained earnings (or such higher amount as the Board of Directors shall determine) to a loss or liability that is not satisfied by the impaired Member's Clearing Fund deposit. Under the proposal, NSCC would amend the calculation of its corporate contribution from a percentage of its retained earnings to a mandatory amount equal to 50 percent of the NSCC General Business Risk Capital Requirement.[14]

NSCC's General Business Risk Capital Requirement, as defined in NSCC's Clearing Agency Policy on Capital Requirements,[15] is, at a minimum, equal to the regulatory capital that NSCC is required to maintain in compliance with Rule 17Ad–22(e)(15) under the Act.[16] The proposed Corporate Contribution would be held in addition to NSCC's General Business Risk Capital Requirement.

Under the current Addendum E of the Rules, NSCC has the discretion to contribute amounts higher than the specified percentage of retained earnings, as determined by the Board of Directors, to any loss or liability incurred by NSCC as result of a Member's impairment. This option would be retained and expanded under the proposal so that NSCC can voluntarily apply amounts greater than the Corporate Contribution against any loss or liability (including non-default losses) of NSCC, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

Currently, the Rules do not require NSCC to contribute its retained earnings to losses and liabilities other than those from Member impairments. Under the proposal, NSCC would apply its Corporate Contribution to non-default losses as well. The proposed Corporate Contribution would apply to losses arising from Defaulting Member Events and Declared Non-Default Loss Events, as defined in the proposed change, and would be a mandatory contribution by NSCC prior to any allocation of the loss among NSCC's Members.[17]

As proposed, if the Corporate Contribution is fully or partially used against a loss or liability relating to an Event Period, the Corporate Contribution would be reduced to the remaining unused amount, if any, during the following 250 business days in order to permit NSCC to replenish the Corporate Contribution.[18] Under the proposal, Members would receive notice of any such reduction to the Corporate Contribution.

(2) Event Period

NSCC states that in order to clearly define the obligations of NSCC and its Members regarding loss allocation and to balance the need to manage the risk of sequential loss events against Members' need for certainty concerning their maximum loss allocation exposures, NSCC proposes to introduce the concept of an Event Period to the Rules to address the losses and liabilities that may arise from or relate to multiple Defaulting Member Events and/or Declared Non-Default Loss Events that arise in quick succession. Specifically, the proposal would group Defaulting Member Events and Declared Non-Default Loss Events occurring within a period of 10 business days (''Event Period'') for purposes of allocating losses to Members in one or

[12] *See* Notice of Amendment No. 1, *supra* note 8.

[13] When NSCC restricts a Member's access to services generally, NSCC is said to have ''ceased to act'' for the Member. Rule 46 (Restrictions on Access to Services) sets out the circumstances under which NSCC may cease to act for a Member, and Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) sets out the types of actions NSCC may take when it ceases to act for a Member. *Supra* note 10.

[14] NSCC calculates its General Business Risk Capital Requirement as the amount equal to the greatest of (1) an amount determined based on its general business profile, (2) an amount determined based on the time estimated to execute a recovery or orderly wind-down of NSCC's critical operations, and (3) an amount determined based on an analysis of NSCC's estimated operating expenses for a six month period.

[15] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–NSCC–2017–004, SR–FICC–2017–007).

[16] 17 CFR 240.17Ad–22(e)(15).

[17] NSCC does not propose to apply the Corporate Contribution if the Clearing Fund is used as a liquidity resource; however, if NSCC uses the Clearing Fund as a liquidity resource for more than 30 calendar days, as set forth in proposed Section 2 of Rule 4, then NSCC would have to consider the amount used as a loss to the Clearing Fund incurred as a result of a Defaulting Member Event and allocate the loss pursuant to proposed Section 4 of Rule 4, which would then require the application of a Corporate Contribution.

[18] NSCC states that 250 business days would be a reasonable estimate of the time frame that NSCC would be required to replenish the Corporate Contribution by equity in accordance with NSCC's Clearing Agency Policy on Capital Requirements, including a conservative additional period to account for any potential delays and/or unknown exigencies in times of distress.

more rounds, subject to the limitations of loss allocation as explained below.[19]

In the case of a loss or liability arising from or relating to a Defaulting Member Event, an Event Period would begin on the day NSCC notifies Members that it has ceased to act for the Defaulting Member (or the next business day, if such day is not a business day). In the case of a loss or liability arising from or relating to a Declared Non-Default Loss Event, an Event Period would begin on the day that NSCC notifies Members of the Declared Non-Default Loss Event (or the next business day, if such day is not a business day). If a subsequent Defaulting Member Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period. An Event Period may include both Defaulting Member Events and Declared Non-Default Loss Events, and there would not be separate Event Periods for Defaulting Member Events or Declared Non-Default Loss Events occurring during overlapping 10 business day periods.

The amount of losses that may be allocated by NSCC, subject to the required Corporate Contribution, and to which a Loss Allocation Cap would apply for any Member that elects to withdraw from membership in respect of a loss allocation round, would include any and all losses from any Defaulting Member Events and any Declared Non-Default Loss Events during the Event Period, regardless of the amount of time, during or after the Event Period, required for such losses to be crystallized and allocated.[20]

(3) Loss Allocation Round and Loss Allocation Notice

Under the proposal, a loss allocation ''round'' would mean a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Members (a ''round cap''). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period would be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. NSCC may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among Members that have not submitted a Loss Allocation Withdrawal Notice in accordance with proposed Section 6 of Rule 4.

Each loss allocation would be communicated to Members by the issuance of a notice that advises each Member of the amount being allocated to it (''Loss Allocation Notice''). Each Member's pro rata share of losses and liabilities to be allocated in any round would be equal to (1) the average of its Required Fund Deposit for the 70 business days preceding the first day of the applicable Event Period or such shorter period of time that the Member has been a Member (each Member's ''Average RFD''), divided by (2) the sum of Average RFD amounts of all Members subject to loss allocation in such round.

Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round would expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Member in that round has five business days from the issuance of such first Loss Allocation Notice for the round to notify NSCC of its election to withdraw from membership with NSCC pursuant to proposed Section 6 of Rule 4, and thereby benefit from its Loss Allocation Cap.[21] In other words, the proposed change would link the Loss Allocation Cap to a round in order to provide Members the option to limit their loss allocation exposure at the beginning of each round. After a first round of loss allocations with respect to an Event Period, only Members that have not submitted a Loss Allocation Withdrawal Notice, in accordance with proposed Section 6 of Rule 4, would be subject to further loss allocation with respect to that Event Period.

NSCC's current loss allocation provisions provide that if a charge is made against a Member's actual Clearing Fund deposit, and as result thereof the Member's deposit is less than its Required Deposit, the Member will, upon demand by NSCC, be required to replenish its deposit to eliminate the deficiency within such time as NSCC shall require. Under the proposal, Members would receive two business days' notice of a loss allocation, and be required to pay the requisite amount no later than the second business day following the issuance of such notice.[22]

(4) Look-Back Period

Currently, the Rules calculate a Member's pro rata share for purposes of loss allocation based on the Member's activity in each of the various services or Systems offered by NSCC.[23] NSCC states that it would be more appropriate to determine a Member's pro rata share of losses and liabilities based on the amount of risk that the Member brings to NSCC, which is represented by the Member's Required Deposit (NSCC proposes that ''Required Deposits'' be renamed ''Required Fund Deposits,'' as described below). Accordingly, NSCC proposes to calculate each Member's pro rata share of losses and liabilities to be allocated in any round (as described above) to be equal to (1) the Member's Average RFD divided by (2) the sum of Average RFD amounts for all Members that are subject to loss allocation in such round. The proposed rule would define a Member's Average RFD as the average of the Member's Required Fund Deposit for the 70 business days[24] preceding the first day of the applicable Event Period or such shorter period of time that the Member has been a Member. Additionally, if a Member withdraws from membership pursuant to proposed

[19] NSCC states that having a 10 business day Event Period would provide a reasonable period of time to encompass potential sequential Defaulting Member Events or Declared Non-Default Loss Events that are likely to be closely linked to an initial event and/or a severe market dislocation episode, while still providing appropriate certainty for Members concerning their maximum exposure to mutualized losses with respect to such events.

[20] Under the proposal, each Member that is a Member on the first day of an Event Period would be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Defaulting Member Event (other than a Defaulting Member Event with respect to which it is the Defaulting Member) and each Declared Non-Default Loss Event occurring during the Event Period.

[21] Pursuant to current Section 8 of Rule 4, the time period for a Member to give notice of its election to terminate its business with NSCC in respect of a pro rata charge is 10 business days after receiving notice of a pro rata charge. *Supra* note 10. NSCC states that it would be appropriate to shorten such time period from 10 business days to five business days because NSCC needs timely notice of which Members would remain in its membership for purposes of calculating the loss allocation for any subsequent round. NSCC states that five business days would provide Members with sufficient time to decide whether to cap their loss allocation obligations by withdrawing from their membership in NSCC.

[22] NSCC states that allowing Members two business days to satisfy their loss allocation obligations would provide Members sufficient notice to arrange funding, if necessary, while allowing NSCC to address losses in a timely manner.

[23] NSCC states that its current loss allocation rules pre-date NSCC's move to a risk-based margining methodology.

[24] NSCC states that having a look-back period of 70 business days is appropriate because it would be long enough to enable NSCC to capture a full calendar quarter of a Member's activities, including quarterly option expirations, and smooth out the impact from any abnormalities and/or arbitrariness that may have occurred, but not too long that the Member's business strategy and outlook could have shifted significantly, resulting in material changes to the size of its portfolios.

Section 6 of Rule 4, NSCC proposes that the Member's Loss Allocation Cap be equal to the greater of (1) its Required Fund Deposit on the first day of the applicable Event Period or (2) its Average RFD.

NSCC states that employing a backward-looking average to calculate a Member's loss allocation pro rata share and Loss Allocation Cap would disincentivize Member behavior that could heighten volatility or reduce liquidity in markets in the midst of a financial crisis. Specifically, NSCC states that the proposed look-back period would discourage a Member from reducing its settlement activity during a time of stress primarily to limit its loss allocation pro rata share, which, as proposed, would now be based on the Member's average settlement activity over the look-back period rather than its settlement activity at a point in time that the Member may not be able to estimate. Similarly, NSCC states that taking a backward-looking average into consideration when determining a Member's Loss Allocation Cap would also deter a Member from reducing its settlement activity during a time of stress primarily to limit its Loss Allocation Cap.

(5) Loss Allocation Withdrawal Notice and Loss Allocation Cap

NSCC's current loss allocation rules allow a Member to withdraw if the Member notifies NSCC, within 10 business days after receipt of notice of a pro rata charge, of its election to terminate its membership and thereby avail itself of a cap on loss allocation. The proposed change would shorten the withdrawal notification period from 10 business days to five business days, and would also change the beginning of such notification period from the receipt of the notice of a pro rata charge to the issuance of the notice.[25] Each round would allow a Member the opportunity to notify NSCC of its election to withdraw from membership after satisfaction of the losses allocated in such round. Multiple Loss Allocation Notices may be issued with respect to each round to allocate losses up to the round cap.

Pursuant to the proposed change, in order to avail itself of its Loss Allocation Cap, a Member would be able to elect to withdraw from membership by following the requirements in proposed Section 6 of Rule 4: (1) Specify in its Loss Allocation Withdrawal Notice (as defined below) an effective date of withdrawal, which date shall be no later than 10 business days following the last day of the applicable Loss Allocation Withdrawal Notification Period (as defined below) (*i.e.,* no later than 10 business days after the fifth business day following the first Loss Allocation Notice in that round of loss allocation);[26] (2) cease all activity that would result in transactions being submitted to NSCC for clearance and settlement for which such Member would be obligated to perform, where the scheduled final settlement date would be later than the effective date of the Member's withdrawal; and (3) ensure that all clearance and settlement activity for which such Member is obligated to NSCC is fully and finally settled by the effective date of the Member's withdrawal, including, without limitation, by resolving by such date all fails and buy-in obligations.

Under the current Rules, a Member's cap on loss allocation is its Required Deposit as fixed immediately prior to the time of the pro rata charge. Under the proposal, the first round and each subsequent round of loss allocation would allocate losses up to a round cap of the aggregate of all Loss Allocation Caps of those Members included in the round. In addition, a Member that withdraws in compliance with proposed Section 6 of Rule 4 would remain obligated for its pro rata share of losses and liabilities with respect to any Event Period for which it is otherwise obligated under Rule 4;[27] however, its aggregate obligation would be limited to the amount of its Loss Allocation Cap as fixed in the round for which it withdrew.[28] If the first round of loss allocation does not fully cover NSCC's losses, a second round would be noticed to those Members that did not elect to withdraw from membership in the previous round; however, the amount of any second or subsequent round cap may differ from the first or preceding round cap because there may be fewer Members in a second or subsequent round if Members elect to withdraw from membership with NSCC as provided in proposed Section 6 of Rule 4 following the first Loss Allocation Notice in any round. To the extent that a Member's Loss Allocation Cap exceeds the Member's Required Fund Deposit on the first day of the applicable Event Period, NSCC may in its discretion retain any excess amounts on deposit from the Member, up to the Member's Loss Allocation Cap.

(6) Declared Non-Default Loss Event

Aside from losses that NSCC might face as a result of a Defaulting Member Event, NSCC could incur non-default losses incident to its clearance and settlement business.[29] The Rules currently permit NSCC to apply the Clearing Fund to non-default losses. Specifically, pursuant to Section 2(b) of Rule 4,[30] NSCC can use the Clearing Fund to satisfy losses or liabilities of NSCC incident to the operation of the clearance and settlement business of NSCC. Section II of Addendum K of the Rules provides additional details regarding the application of the Clearing Fund to losses outside of a System.

NSCC proposes to enhance the governance around non-default losses that would trigger loss allocation to Members by specifying that the Board of Directors would have to determine that there is a non-default loss that may be a significant and substantial loss or liability that may materially impair the ability of NSCC to provide clearance and settlement services in an orderly manner and would potentially generate losses to be mutualized among the Members in order to ensure that NSCC may continue to offer clearance and settlement services in an orderly manner. The proposed change would provide that NSCC would then be required to promptly notify Members of this determination, which would be referred to as a Declared Non-Default Loss Event. In addition, NSCC proposes to specify that a mandatory Corporate Contribution would apply to a Declared Non-Default Loss Event prior to any allocation of the loss among Members, as described above. Additionally, NSCC proposes language to clarify Members' obligations for Declared Non-Default Loss Events.

[25] NSCC states that setting the start date of the withdrawal notification period to the date of issuance of a notice would provide a single withdrawal timeframe that would be consistent across the Members.

[26] NSCC states that having an effective date of withdrawal that is not later than 10 business days following the last day of the Loss Allocation Withdrawal Notification Period would provide Members with a reasonable period of time to wind down their activities at NSCC while minimizing any uncertainty typically associated with a longer withdrawal period.

[27] For the avoidance of doubt, pursuant to Section 13(d) of Rule 4(A) (Supplemental Liquidity Deposits), a Special Activity Supplemental Deposit of a Member may not be used to calculate or be applied to satisfy any pro rata charge pursuant to Section 4 of Rule 4. *Supra* note 10.

[28] If a Member's Loss Allocation Cap exceeds the Member's then-current Required Fund Deposit, it must still cover the excess amount.

[29] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[30] Current Section 2(b) of Rule 4 provides that ''the use of the Clearing Fund . . . shall be limited to satisfaction of losses or liabilities of the Corporation incident to the operation of the clearance and settlement business of the Corporation other than losses and liabilities of a System.'' *Supra* note 10.

B. Changes To Align the Loss Allocation Rules

The proposed changes would align the loss allocation rules, to the extent practicable and appropriate, of the three DTCC Clearing Agencies so as to provide consistent treatment for firms that are participants of multiple DTCC Clearing Agencies. As proposed, the loss allocation process and certain related provisions would be consistent across the DTCC Clearing Agencies to the extent practicable and appropriate.

C. Accelerated Return of Former Member's Clearing Fund Deposit

NSCC proposes to reduce the time in which NSCC may retain a Member's Clearing Fund deposit. Specifically, NSCC proposes that if a Member gives notice to NSCC of its election to withdraw from membership, NSCC would return the Member's Actual Deposit in the form of (1) cash or securities within 30 calendar days and (2) Eligible Letters of Credit within 90 calendar days, after all of the Member's transactions have settled and all matured and contingent obligations to NSCC, for which the Member was responsible while a Member, have been satisfied, except that NSCC may retain for up to two years the Actual Deposits from Members who have Sponsored Accounts at DTC.

NSCC states that shortening the time for the return of a Member's Clearing Fund deposit would be helpful to firms that have exited NSCC, so that such firms could have use of the deposits sooner than under the current Rules. However, such return would only occur if all obligations of the terminating Member to NSCC have been satisfied, which would include both matured as well as contingent obligations.

D. Conforming and Technical Changes

NSCC proposes to make various conforming and technical changes necessary to harmonize the remaining current Rules with the proposed changes. The proposed defined terms in the loss allocation process would be included in Rule 1 (Definitions and Descriptions), and obsolete terms would be replace with the proposed terms. In addition, the rule numbers appear in the remaining current Rules would be updated to reflect the changes made by the proposal. NSCC further proposes to modify its Voluntary Termination process to avoid any potential conflicts with the loss allocation process.

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose 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 and strengthening the liquidity of systemically important financial market utilities.[31]

Section 805(a)(2) of the Clearing Supervision Act[32] authorizes the Commission to prescribe 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. Section 805(b) of the Clearing Supervision Act[33] provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[34] and Section 17A of the Act[35] (''Rule 17Ad–22'').[36] Rule 17Ad–22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[37] Therefore, it is appropriate for the Commission to review proposed changes in advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act[38] and against Rule 17Ad–22.[39]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposed changes in the Advance Notice are designed to help NSCC promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system as discussed below.

NSCC proposes to make the following changes to its loss allocation process as described above. First, NSCC would apply a mandatory fixed percentage of its General Business Risk Capital Requirement as compared to the current Rules, which provide for a ''no less than'' percentage of retained earnings. The proposed changes also would clarify that the proposed Corporate Contribution would apply to Declared Non-Default Loss Events, as well as Defaulting Member Events, on a mandatory basis. Moreover, the proposal specifies that if the Corporate Contribution is applied to a loss or liability relating to an Event Period, then for any subsequent Event Periods that occur during the 250 business days thereafter, the Corporate Contribution would be reduced to the remaining, unused portion of the Corporate Contribution. The Commission believes that these changes set clear expectations about how and when NSCC's Corporate Contribution would be applied to help address a loss, and allow NSCC to better anticipate and prepare for potential exposures that may arise during an Event Period.

Second, as described above, NSCC proposes to determine a Member's loss allocation obligation based on the average of its Required Fund Deposit over a look-back period of 70 business days and to determine its Loss Allocation Cap based on the greater of its Required Fund Deposit or the average thereof over a look-back period of 70 business days. These proposed changes are designed to allow NSCC to calculate a Member's pro rata share of losses and liabilities based on the amount of risk that the Member brings to NSCC. Moreover, using a look-back period to determine a Member's loss allocation obligation is designed to deter Members from reducing their settlement activities during a time of stress primarily to limit their Loss Allocation Caps. As a result of these changes, the Commission believes that NSCC should be in a better position to manage its risk by curtailing the chance that reduced settlement activities contribute to higher volatility or lower liquidity during an already stressed period.

Third, as described above, NSCC proposes to introduce the concept of an Event Period, which would group Defaulting Member Events and Declared Non-Default Loss Events occurring within a period of 10 business days for purposes of allocating losses to Members in one or more rounds. Under the current Rules, every time NSCC incurs a loss or liability, NSCC will

[31] *See* 12 U.S.C. 5461(b).
[32] 12 U.S.C. 5464(a)(2).
[33] 12 U.S.C. 5464(b).
[34] 12 U.S.C. 5464(a)(2).
[35] 15 U.S.C. 78q–1.
[36] 17 CFR 240.17Ad–22.
[37] *Id.*
[38] 12 U.S.C. 5464(b).
[39] 17 CFR 240.17Ad–22.

initiate its current loss allocation process by applying its retained earnings and allocating losses. The current Rules do not contemplate a situation where loss events occur in quick succession. Accordingly, even if multiple losses occur within a short period, the current Rules dictate that NSCC start the loss allocation process separately for each loss event. Having multiple loss allocation calculations and notices from NSCC and withdrawal notices from Members after multiple sequential loss events could cause operational risk to NSCC, since multiple notices may cause confusion at a time of significant stress.

The Commission believes that the proposed change to introduce an Event Period would improve upon the current loss allocation process described immediately above. Specifically, the introduction of an Event Period would provide a more defined and transparent structure than the current loss allocation process. Such an improved structure should enable both NSCC and each Member to more effectively manage the risks and potential financial obligations presented by sequential Defaulting Member Events or Declared Non-Default Loss Events that are likely to arise in quick succession, and could be closely linked to an initial event and/or market dislocation episode. In other words, the proposed Event Period structure should help clarify and define for both NSCC and Members how NSCC would initiate a single defined loss allocation process to cover all loss events within 10 business days. As a result, all loss allocation calculation and notices from NSCC and potential withdrawal notices from Members would be tied back to one Event Period instead of each individual loss event.

Fourth, as described above, the proposal would improve upon the approach laid out in NSCC's current Rules by providing for a loss allocation round, a Loss Allocation Notice process, a Loss Allocation Withdrawal Notice process, and a Loss Allocation Cap. A loss allocation round would be a series of loss allocations relating to an Event Period, the aggregate amount of which would be limited by the round cap. When the losses allocated in a round equals the round cap, any additional losses relating to the Event Period would be allocated in subsequent rounds until all losses from the Event Period are allocated among Members. Each loss allocation would be communicated to Members by the issuance of a Loss Allocation Notice. Each Member in a loss allocation round would have five business days from the issuance of such first Loss Allocation Notice for the round to notify NSCC of its election to withdraw from membership with NSCC, and thereby benefit from its Loss Allocation Cap. The Loss Allocation Cap of a Member would be equal to the greater of its Required Fund Deposit on the first day of the applicable Event Period and its Average RFD. Members would have two business days after NSCC issues a first round Loss Allocation Notice to pay the amount specified in such notice.

The Commission believes that those four proposed changes, to (1) establish a specific Event Period, (2) continue the loss allocation process in successive rounds, (3) clearly communicate with its Members regarding their loss allocation obligations, and (4) effectively identify continuing Members for the purpose of calculating loss allocation obligations in successive rounds, are designed to make NSCC's loss allocation process more certain. In addition, the changes are designed to provide Members with a clear set of procedures that operate within the proposed loss allocation structure, and provide increased predictability and certainty regarding Members' exposures and obligations. Furthermore, by grouping all loss events within 10 business days, the loss allocation process relating to multiple loss events can be streamlined. With enhanced certainty, predictability, and efficiency, NSCC would then be able to better manage its risks from loss events occurring in quick succession, and Members would be able to better manage their risks by deciding whether and when to withdraw from membership and limit their exposures to NSCC. Furthermore, the proposed changes are designed to reduce liquidity risk to Members by providing a two-day window to arrange funding to pay for loss allocation, while still allowing NSCC to address losses in a timely manner.

Fifth, as described above, NSCC proposes to clarify the governance around Declared Non-Default Loss Events by providing that the Board of Directors would have to determine that there is a non-default loss that may be a significant and substantial loss or liability that may materially impair the ability of NSCC to provide its services in an orderly manner. NSCC also proposes to provide that NSCC would then be required to promptly notify Members of this determination and start the loss allocation process concerning the loss stemming from a Declared Non-Default Loss Event.

The Commission believes that the immediately above described changes should provide an orderly and transparent procedure to allocate a non-default loss by requiring the Board of Directors to make a definitive decision to announce an occurrence of a Declared Non-Default Loss Event, and requiring NSCC to provide a notice to Members of such decision. The Commission further believes that an orderly and transparent procedure should result in a risk management process at NSCC that is more robust as a result of enhanced governance around NSCC's response to non-default losses, thereby promoting safety and soundness.

Collectively, the Commission believes that the proposed changes to NSCC's loss allocation process would provide greater transparency, certainty, and efficiency to both NSCC and Members regarding the amount of resources and the instances in which NSCC would apply such resources to address risks arising from Defaulting Member Events and Declared Non-Default Loss Events, which could occur in quick succession. The Commission believes that such transparency, certainty, and efficiency would allow better predictability to NSCC and its Members regarding their exposures, and in turn, would allow a risk management process at NSCC and its Members that is more robust in response to such events and would improve their ability to continue to operate and recover in a safe and sound manner during such events. Therefore, the Commission believes that the proposal promotes robust risk management as well as safety and soundness.

In addition to the key changes discussed above, NSCC proposes to align the loss allocation rules of the DTCC Clearing Agencies to the extent practicable and appropriate. The alignment is designed to help provide consistent treatment for firms that are participants of multiple DTCC Clearing Agencies. The Commission believes that providing consistent treatment through consistent procedures among the DTCC Clearing Agencies would help firms that participate in multiple DTCC Clearing Agencies from encountering unnecessary complexities and confusion stemming from differences in procedures regarding loss allocation processes, particularly at times of significant stress. Accordingly, the Commission believes that the change is designed to reduce systemic risk and support the stability of the broader financial system.

Furthermore, NSCC proposes to reduce the time within which NSCC is required to return a former Member's Clearing Fund deposit that is cash or securities from 90 days to 30 calendar days. The Commission believes that this reduction in time would enable firms

that have exited NSCC to have access to their funds sooner than under the current Rules. While acknowledging that the reduction in time could lesson NSCC's flexibility in liquidity management for the period between 31 calendar days and 90 days, the Commission believes that NSCC's procedures would continue to protect NSCC and its clearance and settlement services because a Member's Clearing Fund deposit would only be returned if all obligations of the terminating Member to NSCC have been satisfied. Therefore, NSCC could maintain necessary coverage for possible claims arising in connection with the NSCC activities of a former Member. Accordingly, the Commission believes that the proposed changes to accelerate the return of a former Member's Clearing Fund deposit are designed to reduce the systemic risks by reducing financial risks for participants of multiple DTCC Clearing Agencies, and in turn, support the stability of the broader financial system.

Finally, NSCC proposes to make conforming and technical changes necessary to harmonize the current Rules with the proposed changes. The Commission believes that these changes are designed to provide clear and coherent Rules concerning loss allocation process to NSCC and its Members. The Commission further believes that clear and coherent Rules should help enhance the ability of NSCC and Members to more effectively plan for, manage, and address the risks and financial obligations that loss events present to NSCC and its Members. Accordingly, the Commission believes that the conforming and technical changes are designed to promote robust risk management.

Therefore, for all of the reasons stated above, the Commission believes that the changes proposed in the Advance Notice are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.[40]

B. Consistency With Rule 17Ad–22(e)(4)(viii)

Rule 17Ad–22(e)(4)(viii) under the Act requires, in part, that a covered clearing agency [41] establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by addressing allocation of credit losses the covered clearing agency may face if its collateral and other resources are insufficient to fully cover its credit exposures.[42]

As described above, the proposal would revise the loss allocation process to address how NSCC would manage loss events, including Defaulting Member Events. Under the proposal, if losses arise out of or relate to a Defaulting Member Event, NSCC would first apply its Corporate Contribution. If such funds prove insufficient, the proposal provides for allocating the remaining losses to the remaining Members through the proposed process. Accordingly, the Commission believes that the proposal is reasonably designed to manage NSCC's credit exposures to its Members, by addressing allocation of credit losses.

Therefore, the Commission believes that NSCC's proposal is consistent with Rule 17Ad–22(e)(4)(viii) under the Act.[43]

C. Consistency With Rule 17Ad–22(e)(13)

Rule 17Ad–22(e)(13) under the Act requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority to take timely action to contain losses and liquidity demands and continue to meet its obligations.[44]

As described above, the proposal would establish a more detailed and structured loss allocation process by (1) modifying the calculation and application of the Corporate Contribution; (2) introducing an Event Period; (3) introducing a loss allocation round and notice process; (4) implementing a look-back period to calculate a Member's loss allocation obligation; (5) modifying the withdrawal process and the cap of withdrawing Member's loss allocation exposure; and (6) providing the governance around a non-default loss. The Commission believes that each of these proposed changes helps establish a more transparent and clear loss allocation process and authority of NSCC to take certain actions, such as announcing a Declared Non-Default Loss Event, within the loss allocation process. Further, having a more transparent and clear loss allocation process as proposed would provide clear authority to NSCC to allocate losses from Defaulting Member Events and Declared Non-Default Loss Events and take timely actions to contain losses, and continue to meet its clearance and settlement obligations.

Therefore, the Commission believes that NSCC's proposal is consistent with Rule 17Ad–22(e)(13) under the Act.[45]

D. Consistency With Rule 17Ad–22(e)(23)(i) and (ii)

Rule 17Ad–22(e)(23)(i) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures.[46] Rule 17Ad–22(e)(23)(ii) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[47]

As described above, the proposal would publicly disclose how NSCC's Corporate Contribution would be calculated and applied. In addition, the proposal would establish and publicly disclose a detailed procedure in the Rules for loss allocation. More specifically, the proposed changes would establish an Event Period, loss allocation rounds, a look-back period to calculate each Member's loss allocation obligation, a withdrawal process followed by a loss allocation process, and a Loss Allocation Cap that would apply to Members after withdrawal. Additionally, the proposal would align the loss allocation rules across the DTCC Clearing Agencies to help provide consistent treatment, and clarify that non-default losses would trigger loss allocation to Members. The proposal would also provide for and make known to members the procedures to trigger a loss allocation procedure, contribute NSCC's Corporate Contribution, allocate losses, and withdraw and limit Member's loss exposure. Accordingly, the Commission believes that the

[40] 12 U.S.C. 5464(b).

[41] A ''covered clearing agency'' means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1 *et seq.*) that is designated systemically important by the Financial Stability Oversight Counsel (''FSOC'') pursuant to the Clearing Supervision Act (12 U.S.C. 5461 *et seq.*). *See* 17 CFR 240.17Ad–22(a)(5) and (6). On July 18, 2012, FSOC designated NSCC as systemically important. U.S. Department of the Treasury, ''FSOC Makes First Designations in Effort to Protect Against Future Financial Crises,'' *available at https://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx.* Therefore, NSCC is a covered clearing agency.

[42] 17 CFR 240.17Ad–22(e)(4)(viii).

[43] *Id.*

[44] 17 CFR 240.17Ad–22(e)(13).

[45] *Id.*

[46] 17 CFR 240.17Ad–22(e)(23)(i).

[47] 17 CFR 240.17Ad–22(e)(23)(ii).

proposal is reasonably designed to (1) publicly disclose all relevant rules and material procedures concerning key aspects of NSCC's default rules and procedures, and (2) provide sufficient information to enable Members to identify and evaluate the risks by participating in NSCC.

Therefore, the Commission believes that NSCC's proposal is consistent with Rules 17Ad–22(e)(23)(i) and (ii) under the Act.[48]

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[49] that the Commission *does not object* to advance notice SR–NSCC–2017–806, as modified by Amendment No. 1, and that NSCC is *authorized* to implement the proposal as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–NSCC–2017–018, as modified by Amendment No. 1, whichever is later.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18866 Filed 8–29–18; 8:45 am]

BILLING CODE 8011–01–P

[48] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[49] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83954; File No. SR–FICC–2017–805]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of No Objection to an Advance Notice, as Modified by Amendment No. 1, To Adopt a Recovery & Wind-Down Plan and Related Rules

August 27, 2018.

On December 18, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–FICC–2017–805 pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act'') [2] to adopt a recovery and wind-down plan (''R&W Plan'') and related rules.[3] The advance notice was published for comment in the **Federal Register** on January 30, 2018.[4] In that publication, the Commission also extended the review period of the advance notice for an additional 60 days, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[5] On April 10, 2018, the Commission required additional information from FICC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,[6] which tolled the Commission's period of review of the advance notice until 60 days from the date the information required by the Commission was received by the Commission.[7] On June 28, 2018, FICC filed Amendment No. 1 to the advance notice to amend and replace in its entirety the advance notice as originally filed on December 18, 2017.[8] On July 6, 2018, the Commission received a response to its request for additional information in consideration of the advance notice, which, in turn, added a further 60-days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act.[9] The Commission did not receive any comments. This publication serves as notice that the Commission does not object to the proposed changes set forth in the advance notice, as modified by Amendment No. 1 (hereinafter, ''Advance Notice'').

I. Description of the Advance Notice

In the Advance Notice, FICC proposes to (1) adopt an R&W Plan; (2) amend FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'') to (a) adopt Rule 22D (Wind-down of the Corporation) and Rule 50 (Market Disruption and Force Majeure), and (b) make conforming changes to Rule 3A (Sponsoring Members and Sponsored Members), Rule 3B (Centrally Cleared Institutional Triparty Service) and Rule 13 (Funds-Only Settlement) related to the adoption of these proposed rules to the GSD Rules; (3) amend FICC's Mortgage-Backed Securities Division (''MBSD,'' and, together with GSD, the ''Divisions'') Clearing Rules (''MBSD Rules'') in order to (a) adopt Rule 17B (Wind-down of the Corporation) and Rule 40 (Market Disruption and Force Majeure); and (b) make conforming changes to Rule 3A (Cash Settlement Bank Members) related to the adoption of these proposed rules to the MBSD Rules; and (4) amend Rule 1 of the Electronic Pool Netting (''EPN'') Rules of MBSD (''EPN Rules'') to provide that EPN Users, as defined therein, are bound by proposed Rule 17B (Wind-down of the Corporation) and proposed Rule 40 (Market Disruption and Force Majeure) to be adopted to the MBSD Rules.[10] Each of the proposed rules is

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On December 18, 2017, FICC filed the advance notice as proposed rule change SR–FICC–2017–021 with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on January 8, 2018. Securities Exchange Act Release No. 82431 (January 2, 2018), 83 FR 871 (January 8, 2018) (SR–FICC–2017–021). On February 8, 2018, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82669 (February 8, 2018), 83 FR 6653 (February 14, 2018) (SR–DTC–2017–021, SR–FICC–2017–021, SR–NSCC–2017–017). On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82913 (March 20, 2018), 83 FR 12997 (March 26, 2018) (SR–FICC–2017–021). On June 25, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 83509 (June 25, 2018), 83 FR 30785 (June 29, 2018) (SR–DTC–2017–021, SR–FICC–2017–021, SR–NSCC–2017–017). On June 28, 2018, FICC filed Amendment No. 1 to the Proposed Rule Change. Securities Exchange Act Release No. 83630 (July 13, 2018), 83 FR 34213 (July 19, 2018) (SR–FICC–2017–021). FICC submitted a courtesy copy of Amendment No. 1 to the Proposed Rule Change through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the Proposed Rule Change has been publicly available on the Commission's website at *https://www.sec.gov/rules/sro/ficc.htm* since June 29, 2018. The Commission did not receive any comments. The proposal, as set forth in both the advance notice and the Proposed Rule Change, each as modified by Amendments No. 1, shall not take effect until all required regulatory actions are completed.

[4] Securities Exchange Act Release No. 82580 (January 24, 2018), 83 FR 4341 (January 30, 2018) (SR–FICC–2017–805) (''Notice'').

[5] Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H). The Commission found that the advance notice raised novel and complex issues and, accordingly, extended the review period of the advance notice for an additional 60 days until April 17, 2018. *See* Notice, *supra* note 4.

[6] 12 U.S.C. 5465(e)(1)(D).

[7] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); *see* 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/rules/sro/ficc-an.htm.*

[8] Securities Exchange Act Release No. 83744 (July 31, 2018), 83 FR 38413 (August 6, 2018) (SR–FICC–2017–805). FICC submitted a courtesy copy of Amendment No. 1 to the advance notice through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the advance notice has been publicly available on the Commission's website at *https://www.sec.gov/rules/sro/ficc-an.htm* since June 29, 2018.

[9] 12 U.S.C. 5465(e)(1)(E) and (G); *see* 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/rules/sro/ficc-an.htm.*

[10] The GSD Rules and the MBSD Rules are referred to collectively herein as the ''Rules.''

Continued

referred to herein as a ''Proposed Rule,'' and are collectively referred to as the ''Proposed Rules.''

FICC states that the R&W Plan would be used by the Board of Directors of FICC (''Board'') and FICC's management in the event FICC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern.

FICC states that the Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow FICC to effectuate its strategy for winding down and transferring its business; (2) provide Members and Limited Members with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations; [11] and (3) provide FICC with the legal basis to implement those provisions of the R&W Plan when necessary.

A. FICC R&W Plan

The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to FICC to either (i) recover, in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the ''Recovery Plan'') or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the ''Wind-down Plan''). The R&W Plan would identify (i) the recovery tools available to FICC to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more Members, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for implementation of such tools. The R&W Plan would also establish the strategy and framework for the orderly wind-down of FICC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return FICC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of FICC and its parent, The Depository Trust & Clearing Corporation (''DTCC''); [12] (ii) an analysis of FICC's intercompany arrangements and an existing link to another financial market infrastructure (''FMI''); (iii) a description of FICC's services, and the criteria used to determine which services are considered critical; (iv) a description of the FICC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to FICC to mitigate credit/market [13] risks and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a Crisis Continuum timeline; (vii) a discussion of potential non-default losses and the resources available to FICC to address such losses, including recovery triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools' characteristics, including how they are designed to be comprehensive, effective, and transparent, how the tools provide incentives to Members to, among other things, control and monitor the risks they may present to FICC, and how FICC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of FICC's business, including an estimate of the time and costs to effect a recovery or orderly wind-down of FICC.

Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules); therefore, descriptions of those tools in the R&W Plan would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in contractual arrangements to which FICC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that FICC may develop further supporting internal guidelines and materials that may provide operational support for matters described in the R&W Plan, and that such documents would be supplemental and subordinate to the R&W Plan.

FICC states that many of the tools available to FICC that would be described in the R&W Plan are FICC's existing, business-as-usual risk management and Member default management tools, which would continue to be applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe FICC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity (''LNA'') to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements (''Capital Policy''),[14] (ii) maintaining the Clearing Agency Capital Replenishment Plan (''Replenishment Plan'') as a viable plan for the replenishment of capital should FICC's equity fall close to or below the amount being held pursuant to the Capital Policy,[15] and (iii) the process for the allocation of losses among Members, as provided in GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation).[16] The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning (''R&R Team'') of DTCC.[17] The R&R Team reports to the DTCC Management Committee (''Management Committee'') and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and would also review and approve any changes that

Capitalized terms not defined herein are defined in the Rules.

[11] References herein to ''Members'' refer to GSD Netting Members and MBSD Clearing Members. References herein to ''Limited Members'' refer to participants of GSD or MBSD other than GSD Netting Members and MBSD Clearing Members, including, for example, GSD Comparison-Only Members, GSD Sponsored Members, GSD CCIT Members, and MBSD EPN Users.

[12] DTCC is a user-owned and user-governed holding company and is the parent company of FICC and its affiliates, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC'', and, together with FICC and DTC, the ''Clearing Agencies''). The R&W Plan would describe how corporate support services are provided to FICC from DTCC and DTCC's other subsidiaries through intercompany agreements under a shared services model.

[13] FICC states that it uses the term ''credit/market'' risks in the R&W Plan because FICC monitors its credit exposure to its Members by managing the market risks of each Member's unsettled portfolio through the collection of each Division's Clearing Fund. *See infra* note 23.

[14] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–FICC–2017–007, SR–NSCC–2017–004).

[15] *See id.*

[16] *See supra* note 10.

[17] DTCC operates on a shared services model with respect to FICC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including FICC.

are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of FICC's wind-down and would provide for FICC's authority to take certain actions on the occurrence of a Market Disruption Event, as defined therein. FICC states that the Proposed Rules are designed to provide Members and Limited Members with transparency and certainty with respect to these matters. FICC also states that the Proposed Rules are designed to facilitate the implementation of the R&W Plan, particularly FICC's strategy for winding down and transferring its business, and are designed to provide FICC with the legal basis to implement those aspects of the R&W Plan.

1. Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document's purpose and its regulatory background, and would outline a summary of the R&W Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and FICC management in the event FICC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern.

The R&W Plan would describe DTCC's business profile, provide a summary of the services of FICC as offered by each of the Divisions, and identify the intercompany arrangements and links between FICC and other entities, most notably a link between GSD and Chicago Mercantile Exchange Inc. (''CME''), which is also an FMI. FICC states that the overview section would provide a context for the R&W Plan by describing FICC's business, organizational structure and critical links to other entities. FICC also states that by providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later sections of the Recovery Plan, and the analysis of the factors that would be addressed in implementing the Wind-down Plan.

The R&W Plan would provide a description of the critical contractual and operational arrangements between FICC and other legal entities, including the cross-margining agreement between GSD and CME, which is also an FMI.[18] FICC states that this section of the R&W Plan, which identifies and briefly describes FICC's established links, is designed to provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The R&W Plan would define the criteria for classifying certain of FICC's services as ''critical,'' and would identify those critical services and the rationale for their classification. This section of the R&W Plan would provide an analysis of the potential systemic impact from a service disruption, which FICC states is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of FICC's critical services to the markets it serves. The criteria that would be used to identify an FICC service or function as critical would include (1) whether there is a lack of alternative providers or products; (2) whether failure of the service could impact FICC's ability to perform its central counterparty services through either Division; (3) whether failure of the service could impact FICC's ability to perform its multilateral netting services through either Division and, therefore, could impact the volume of transactions; (4) whether failure of the service could impact FICC's ability to perform its book-entry delivery and settlement services through either Division and, as such, could impact transaction costs; (5) whether failure of the service could impact FICC's ability to perform its cash payment processing services through either Division and, as such, could impact the flow of liquidity in the U.S. financial markets; and (6) whether the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks, and broker-dealers. The R&W Plan would then list each of those services, functions or activities that FICC has identified as ''critical'' based on the applicability of these six criteria. The R&W Plan would also include a non-exhaustive list of FICC services that are not deemed critical.

FICC states that the evaluation of which services provided by FICC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. While FICC's Wind-down Plan would provide for the transfer of all critical services to a transferee in the event FICC's wind-down is implemented, it would anticipate that any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership, would also be transferred.

The R&W Plan would describe the governance structure of both DTCC and FICC. This section of the R&W Plan would identify the ownership and governance model of these entities at both the Board and management levels. The R&W Plan would state that the stages of escalation required to manage recovery under the Recovery Plan or to invoke FICC's wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through FICC's governance structure. The R&W Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The R&W Plan would identify the Risk Committee of the Board (''Board Risk Committee'') as being responsible for oversight of risk management activities at FICC, which include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by FICC as well as oversight of FICC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[19] The R&W Plan would identify the DTCC Management Risk Committee (''Management Risk Committee'') as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The R&W Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office (''GCRO''), which works with staff within the DTCC Financial Risk Management group. Finally, the R&W Plan would describe the role of the Management Committee, which provides overall direction for all aspects of FICC's business, technology, and operations and the functional areas that support these activities.

The R&W Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the R&W Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Member, which would be

[18] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_cme_crossmargin_agreement.pdf. See also* GSD Rule 43 (Cross-Margining Arrangements), *supra* note 10.

[19] The DTCC, DTC, NSCC, FICC Risk Committee Charter is *available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.*

reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer (''CFO'') and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.[20] More generally, the R&W Plan would state that the type of loss and the nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. Both the Recovery Plan and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the R&W Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

2. FICC Recovery Plan

FICC states that the Recovery Plan is intended to be a roadmap of those actions that FICC may employ across both Divisions to monitor and, as needed, stabilize its financial condition. FICC also states that as each event that could lead to a financial loss could be unique in its circumstances, FICC proposes that the Recovery Plan would not be prescriptive and would permit FICC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based. FICC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that FICC would employ across evolving stress scenarios that it may face as it transitions through a Crisis Continuum, described below; (2) a description of FICC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to FICC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either default losses or non-default losses. In all cases, FICC states that it would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation to best protect FICC, the Members, and the markets in which it operates.

(i) Managing Member Default Losses and Liquidity Needs Through the Crisis Continuum

The Recovery Plan would describe the risk management surveillance, tools, and governance that FICC may employ across an increasing stress environment, which is referred to as the Crisis Continuum. This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stress market phase, (3) a phase commencing with FICC's decision to cease to act for a Member or Affiliated Family of Members[21] (referred to in the R&W Plan as the ''Member default phase''), and (4) a recovery phase. In the R&W Plan, the term ''cease to act'' and the actions that lead to such decision are used within the context of each Division's Rules, in particular Rules 21 and 22 of the GSD Rules and Rules 14 and 16 of the MBSD Rules.[22] Further, the R&W Plan would, for purposes of the R&W Plan, use the following terms: (1) ''Member default'' to refer to the event or events that precipitate FICC ceasing to act for a Member or an Affiliated Family; (2) ''Defaulting Member'' to refer to a Member for which FICC has ceased to act; and (3) ''Member Default Losses'' to refer to losses that arise out of or relate to the Member default (including any losses that arise from liquidation of that Member's portfolio), and to distinguish such losses from those that arise out of the business or other events not related to a Member default, which are separately addressed in the R&W Plan.

FICC states that the Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing FICC's ongoing management of credit, market and liquidity risk across the Divisions, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. FICC also states that the Recovery Plan would discuss the management of credit/market risk and liquidity exposures together because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. FICC states that it manages these risk exposures collectively to limit their overall impact on FICC and the memberships of the Divisions. FICC states that as part of its market risk management strategy, FICC manages its credit exposure to Members by determining the appropriate required deposits to the GSD and MBSD Clearing Fund and monitoring its sufficiency, as provided for in the applicable Rules.[23] FICC states that it manages its liquidity risks with an objective of maintaining sufficient resources to be able to fulfill obligations that have been guaranteed by FICC in the event of a Member default that presents the largest aggregate liquidity exposure to FICC over the settlement cycle.[24]

The Recovery Plan would outline the metrics and indicators that FICC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. FICC states that the Recovery Plan is designed to make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that FICC would retain the

[20] The R&W Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event. Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process.

[21] The R&W Plan would define an ''Affiliated Family'' of Members as a number of affiliated entities that are all Members of either GSD or MBSD.

[22] *See* GSD Rules 21 (Restrictions on Access to Services) and 22 (Insolvency of a Member), and MBSD Rules 14 (Restrictions on Access to Services) and 16 (Insolvency of a Member), *supra* note 10.

[23] *See* GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 10. FICC states that because GSD and MBSD do not maintain a guaranty fund separate and apart from the Clearing Fund they collect from Members, FICC monitors its credit exposure to its Members by managing the market risks of each Member's unsettled portfolio through the collection of each Division's Clearing Fund. The aggregate of all Members' Required Clearing Fund deposits to each of GSD or MBSD comprises that Division's Clearing Fund that represents FICC's prefunded resources to address uncovered loss exposures as provided in GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation). Therefore, FICC states that its market risk management strategy for both Divisions is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' *See* 17 CFR 240.17Ad–22(e)(4).

[24] FICC's liquidity risk management strategy, including the manner in which FICC utilizes its liquidity tools, is described in the Clearing Agency Liquidity Risk Management Framework. *See* Securities Exchange Act Release No. 82377 (December 21, 2017), 82 FR 61617 (December 28, 2017) (SR–DTC–2017–004, SR–FICC–2017–008, SR–NSCC–2017–005).

flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Member default in accordance with the applicable Rules. Therefore, FICC states that the Recovery Plan would both provide FICC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that FICC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of FICC during a period of stress.

The stable market phase of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include (1) routine monitoring of margin adequacy through daily review of back testing and stress testing results that review the adequacy of the margin calculations for each of GSD and MBSD, and escalation of those results to internal and Board committees; [25] and (2) routine monitoring of liquidity adequacy through review of daily liquidity studies that measure sufficiency of available liquidity resources to meet cash settlement obligations of the Member that would generate the largest aggregate payment obligation.[26]

The Recovery Plan would describe some of the indicators of the stress market phase of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Member default would be imminent. Within the description of this phase, the Recovery Plan would provide that FICC may take targeted, routine risk management measures as necessary and as permitted by the Rules.

Within the Member default phase of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that FICC would follow in the event of a Member default and any decision by FICC to cease to act for that Member.[27] The Recovery Plan would provide that the objectives of FICC's actions upon a Member or Affiliated Family default are to (1) minimize losses and market exposure of the affected Members and the applicable Division's non-Defaulting Members; and (2), to the extent practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. Management of liquidity risk through this phase would involve ongoing monitoring of the adequacy of FICC's liquidity resources, and the Recovery Plan would identify certain actions FICC may deploy as it deems necessary to mitigate a potential liquidity shortfall. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

The Recovery Plan would also identify financial resources available to FICC, pursuant to the Rules, to address losses arising out of a Member default. Specifically, GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation) provides that losses remaining after application of the Defaulting Member's resources be satisfied first by applying a Corporate Contribution, and then, if necessary, by allocating remaining losses among the membership in accordance with GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), as applicable.[28]

In order to provide for an effective and timely recovery, the Recovery Plan would describe the period of time that would occur near the end of the Member default phase, during which FICC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase (referred to in the R&W Plan as the Recovery Corridor). The Recovery Plan would then describe the recovery phase of the Crisis Continuum, which would begin on the date that FICC issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period.[29] The recovery phase would describe actions that FICC may take to avoid entering into a wind-down of its business.

FICC states that it expects that significant deterioration of liquidity resources would cause it to enter the Recovery Corridor. Therefore, the R&W Plan would describe the actions FICC may take at this stage aimed at replenishing those resources. Throughout the Recovery Corridor, FICC would monitor the adequacy of the Divisions' respective resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain corridor indicator metrics.

FICC states that the majority of the corridor indicators, as identified in the Recovery Plan, relate directly to conditions that may require either Division to adjust its strategy for hedging and liquidating a Defaulting Member's portfolio, and any such changes would include an assessment of the status of the corridor indicators. For each corridor indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) ''Corridor Actions,'' which are steps that may be taken to

[25] FICC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). *See* Securities Exchange Act Release No. 82638 (December 19, 2017), 82 FR 61082 (December 26, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006).

[26] *See supra* note 24 (concerning FICC's liquidity risk management strategy).

[27] *See* GSD Rule 21 (Restrictions on Access to Services), GSD Rule 22A (Procedures for When the Corporation Ceases to Act), MBSD Rule 14 (Restrictions on Access to Services), and MBSD Rule 17 (Procedures for When the Corporation Ceases to Act), *supra* note 10.

[28] *See supra* note 10. GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation) define the amount FICC would contribute to address a loss resulting from either a Member default or a non-default event as the Corporate Contribution. This amount would be 50 percent of the General Business Risk Capital Requirement, which is calculated pursuant to the Capital Policy and, which FICC states is an amount sufficient to cover potential general business losses so that FICC can continue operations and services as a going concern if those losses materialize, in an effort to comply with Rule 17Ad–22(e)(15) under the Act. *See supra* note 14 (concerning the Capital Policy); 17 CFR 240.17Ad–22(e)(15).

[29] As provided for in GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), the ''Event Period'' is ten Business Days beginning on (i) with respect to a Member default, the day on which FICC notifies Members that it has ceased to act for a Member under the Rules, or (ii) with respect to a non-default loss, the day that FICC notifies Members of the determination by the Board that there is a non-default loss event. The proposed GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation) define a ''round'' as a series of loss allocations relating to an Event Period, and provides that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the Loss Allocation Caps of those Members included in the round. *See* GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 10.

improve the status of the indicator,[30] as well as management escalations required to authorize those steps. FICC states that because FICC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the corridor indicators. Therefore, FICC states that these metrics were chosen based on the business judgment of FICC management.

The Recovery Plan would also describe the reporting and escalation of the status of the corridor indicators throughout the Recovery Corridor. Significant deterioration of a corridor indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. FICC management would review the corridor indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Member defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that FICC may remain in the Recovery Corridor between one day and two weeks. FICC states that this estimate is based on historical data observed in past Member defaults, the results of simulations of Member defaults, and periodic liquidity analyses conducted by FICC. FICC states that the actual length of a Recovery Corridor would vary based on actual market conditions observed at the time, and FICC would expect the Recovery Corridor to be shorter in market conditions of increased stress.

The Recovery Plan would outline steps by which FICC may allocate its losses, which would occur when and in the order provided in GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), as applicable.[31] The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of FICC's liquidity resources following a Member default, and would provide that these tools may be used as appropriate during the Crisis Continuum to address liquidity shortfalls if they arise. FICC states that the goal in managing FICC's qualified liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders of liquidity in a timely manner. Additional voluntary or uncommitted tools to address potential liquidity shortfalls which may supplement FICC's other liquid resources described herein, would also be identified in the Recovery Plan. The Recovery Plan would state that, due to the extreme nature of a stress event that would cause FICC to consider the use of these liquidity tools, the availability and capacity of these liquidity tools, and the willingness of counterparties to lend, cannot be accurately predicted and are dependent on the circumstances of the applicable stress period, including market price volatility, actual or perceived disruptions in financial markets, the costs to FICC of utilizing these tools, and any potential impact on FICC's credit rating.

The Recovery Plan would state that FICC will have entered the recovery phase on the date that it issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, FICC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered.

The Recovery Plan would describe governance for the actions and tools that may be employed within each phase of the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the various indicators and metrics applicable to that phase of the Crisis Continuum, and would follow the relevant escalation protocols that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Member, pursuant to the applicable Division's Rules, and around the management and oversight of the subsequent liquidation of the Defaulting Member's portfolio. The Recovery Plan would state that, overall, FICC would retain flexibility in accordance with each Division's Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best protect FICC and the Members, and to meet the primary objectives, throughout the Crisis Continuum, of minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

(ii) Non-Default Losses

The Recovery Plan would outline how FICC may address losses that result from events other than a Member default. While these matters are addressed in greater detail in other documents, this section of the R&W Plan would provide a roadmap to those documents and an outline for FICC's approach to monitoring and managing losses that could result from a non-default event. The R&W Plan would first identify some of the risks FICC faces that could lead to these losses, which include, for example, (1) the business and profit/loss risks of unexpected declines in revenue or growth of expenses; (2) the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and (3) custody or investment risks that could lead to financial losses. The Recovery Plan would describe FICC's overall strategy for the management of these risks, which includes a ''three lines of defense'' approach to risk management that allows for comprehensive management of risk across the organization.[32] The Recovery Plan would also describe FICC's approach to financial risk and capital management. The R&W Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow FICC to effectively

[30] The Corridor Actions that would be identified in the R&W Plan are designed to be indicative, but not prescriptive; therefore, if FICC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the R&W Plan for the Corridor Indicator to which the action relates.

[31] *See supra* note 10.

[32] FICC states that the ''three lines of defense'' approach to risk management includes (1) a first line of defense comprised of the various business lines and functional units that support the products and services offered by FICC; (2) a second line of defense comprised of control functions that support FICC, including the risk management, legal and compliance areas; and (3) a third line of defense, which is performed by an internal audit group. The Clearing Agency Risk Management Framework includes a description of this ''three lines of defense'' approach to risk management, and addresses how FICC comprehensively manages various risks, including operational, general business, investment, custody, and other risks that arise in or are borne by it. Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR–DTC–2017–013, SR–FICC–2017–016, SR–NSCC–2017–012). The Clearing Agency Operational Risk Management Framework describes the manner in which FICC manages operational risks, as defined therein. Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR–DTC–2017–014, SR–FICC–2017–017, SR–NSCC–2017–013).

identify, monitor, and manage risks of non-default losses.

The R&W Plan would identify the two categories of financial resources FICC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,[33] (b) the Corporate Contribution,[34] and (c) other amounts held in excess of FICC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation).[35]

The R&W Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.[36] Finally the R&W Plan would discuss how FICC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the loss or liability exceeds FICC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a Declared Non-Default Loss Event pursuant to GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation).[37]

The R&W Plan would also describe proposed GSD Rule 50 (Market Disruption and Force Majeure) and proposed MBSD Rule 40 (Market Disruption and Force Majeure), which FICC is proposing to adopt in the GSD Rule and MBSD Rules, respectively. FICC states that this Proposed Rule is designed to provide transparency around how FICC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a Market Disruption Event and the governance around a determination that such an event has occurred. The Proposed Rule would also describe FICC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable.

The R&W Plan would describe the interaction between the Proposed Rule and FICC's existing processes and procedures addressing business continuity management and disaster recovery (generally, the ''BCM/DR procedures''). FICC states that the intent is to make clear that the Proposed Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to FICC and not necessarily addressed by the BCM/DR procedures. Finally, the R&W Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a time limit on its application. However, the R&W Plan would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. FICC states that, overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

(iii) Recovery Tool Characteristics

The Recovery Plan would describe FICC's evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide incentives to Members and minimize negative impact on Members and the financial system.

3. FICC Wind-Down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of FICC if the use of the recovery tools described in the Recovery Plan do not successfully return FICC to financial viability. FICC states that while such event is extremely unlikely, given the comprehensive nature of the recovery tools, FICC is proposing a wind-down strategy that provides for (1) the transfer of FICC's business, assets, and memberships of both Divisions to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Bankruptcy Code,[38] and (3) after effectuating this transfer, FICC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. FICC states that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that FICC's critical services will be available to the market as long as there are Members in good standing, and (2) minimizing disruption to the operations of Members and financial markets generally that might be caused by FICC's failure.

In describing the transfer approach to FICC's Wind-down Plan, the R&W Plan would identify the factors that FICC considered in developing this approach, including the fact that FICC does not own material assets that are unrelated to its clearance and settlement activities. Therefore, FICC states that a business reorganization or ''bail-in'' of debt approach would be unlikely to mitigate significant losses. Additionally, FICC states that the proposed approach was developed in consideration of its critical and unique position in the U.S. markets, which precludes any approach that would cause FICC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of FICC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down FICC as the Runway Period. FICC states that this period would follow the implementation of any recovery tools, as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for FICC to realize a loss sufficient to cause it to be unable to effectuate settlements and repay its obligations.[39] The Wind-down Plan would identify some of the indicators that it has entered this Runway Period.

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning FICC to viability as a going concern. As described in the R&W Plan, FICC states that this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of FICC and the Members to avoid actions that might undermine FICC's recovery efforts. Additionally, FICC states that this

[33] *See supra* note 28.

[34] *See supra* note 28.

[35] *See supra* note 10.

[36] *See supra* note 14 (concerning the Capital Policy).

[37] *See supra* note 10.

[38] 11 U.S.C. 101 *et seq.*

[39] The Wind-down Plan would state that, given FICC's position as a user-governed financial market utility, it is possible that Members might voluntarily elect to provide additional support during the recovery phase leading up to a potential trigger of the Wind-down Plan, but would also be designed to make clear that FICC cannot predict the willingness of Members to do so.

approach takes into account the characteristics of FICC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of FICC's recovery tools.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of FICC's critical services, business, assets, and membership, and the assignment of GSD's link with another FMI, to another legal entity that is legally, financially, and operationally able to provide FICC's critical services to entities that wish to continue their membership following the transfer (''Transferee''). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently (''Third Party Transferee''); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC (''Failover Transferee'') to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire FICC's business. FICC would seek to identify the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Bankruptcy Code.[40] The Wind-down Plan would anticipate that the transfer to the Transferee be effected in connection with proceedings under Chapter 11 of the U.S. Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, with the intent that the transfer be free and clear of claims against, and interests in, FICC, except to the extent expressly provided in the court's order.[41]

FICC states that in order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, FICC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership. Following the transfer, the Wind-down Plan would anticipate that the Transferee and its continuing membership would determine whether to continue to provide any transferred non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. FICC's Wind-down Plan would anticipate that the Transferee would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to FICC, including staffing, infrastructure and operational support. The Wind-down Plan would also anticipate the assignment of FICC's link arrangements, including its arrangements with clearing banks and GSD's cross-margining arrangement with CME, described above, to the Transferee.[42] The Wind-down Plan would provide that Members' open positions existing prior to the effective time of the transfer would be addressed by the provisions of the proposed Wind-down Rule, as defined and described below, and the existing GSD Rule 22B (Corporation Default) and MBSD Rule 17 (Corporation Default) (collectively, ''Corporation Default Rule''), as applicable, and that the Transferee would not acquire any pending or open transactions with the transfer of the business.[43] The Wind-down Plan would anticipate that the Transferee would accept transactions for processing with a trade date from and after the effective time of the transfer.

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of FICC would involve addressing any residual claims against FICC through the bankruptcy process and liquidating the legal entity. The Wind-down Plan does not contemplate FICC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated.

The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of FICC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of FICC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) FICC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether FICC could safely stabilize the business and protect its value without seeking bankruptcy protection, and FICC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions FICC or DTCC may take to prepare for wind-down in the period before FICC experiences any financial distress, (2) actions FICC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions FICC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the R&W Plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to achieve a recovery or orderly wind-down of FICC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by FICC's average monthly operating expenses, including adjustments to account for changes to FICC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of FICC's critical operations. The estimated wind-down

[40] *See* 11 U.S.C. 101 *et seq.*

[41] *See* 11 U.S.C. 363.

[42] The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by FICC. However, to the extent the Transferee adopts rules substantially identical to those FICC has in effect prior to the transfer, FICC states that it would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that neither of the Divisions' respective Clearing Funds would be transferred to the Transferee, as they are not held in a bankruptcy remote manner and they are the primary prefunded liquidity resource to be accessed in the recovery phase.

[43] *See supra* note 10.

costs would constitute the Recovery/Wind-down Capital Requirement under the Capital Policy.[44] Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.[45]

FICC states that the R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed GSD Rule 22D and MBSD Rule 17B (Wind-down of the Corporation), which would be adopted to facilitate the implementation of the Wind-down Plan, as discussed below.

B. Proposed Rules

In connection with the adoption of the R&W Plan, FICC proposes to adopt the Proposed Rules, each of which is described below. FICC states that the Proposed Rules are designed to facilitate the execution of the R&W Plan and are designed to provide Members and Limited Members with transparency as to critical aspects of the R&W Plan, particularly as they relate to the rights and responsibilities of both FICC and Members. FICC also states that the Proposed Rules are designed to provide a legal basis to these aspects of the R&W Plan.

1. GSD Rule 22D and MBSD Rule 17B (Wind-Down of the Corporation)

FICC states that the proposed GSD Rule 22D and MBSD Rule 17B (collectively, ''Wind-down Rule'') are designed to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. FICC states that the Wind-down Rule is designed to make clear that a wind-down of FICC's business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of FICC's services to a Transferee, as described therein. Because GSD and MBSD are both divisions of FICC, the individual Wind-down Rules are designed to work together. A decision by the Board to initiate the Wind-down Plan would be pursuant to, and trigger the provisions of, the Wind-down Rule of each Division simultaneously. FICC states that, generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Members, Eligible Limited Members, and Settling Banks (as these terms would be defined in the Wind-down Rule), and FICC's business in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

(i) Wind-Down Trigger

First, FICC states that the Proposed Rule is designed to make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan and in the proposed Wind-down Rule, the Board would initiate the Wind-down Plan if, in the exercise of its business judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore FICC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of FICC's business, is in the best interests of FICC, Members and Limited Members of both Divisions, its shareholders and creditors, and the U.S. financial markets.

(ii) Identification of Critical Services; Designation of Dates and Times for Specific Actions

The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of FICC's business to a Transferee (''Transfer Time''), (2) the last day that transactions may be submitted to either Division for processing (''Last Transaction Acceptance Date''), and (3) the last day that transactions submitted to either Division will be settled (''Last Settlement Date'').

(iii) Treatment of Pending Transactions

The Wind-down Rule would authorize the Board to provide for the settlement of pending transactions of either Division prior to the Transfer Time, so long as the applicable Division's Corporation Default Rule has not been triggered. The Board would also have the ability to allow Members to only submit trades to the applicable Division that would effectively offset pending positions or provide that transactions will be processed in accordance with special or exception processing procedures. FICC states that the Proposed Rule is designed to enable these actions in order to facilitate settlement of pending transactions of the applicable Division and reduce claims against FICC that would have to be satisfied after the transfer has been effected. If none of these actions are deemed practicable (or if the applicable Division's Corporation Default Rule has been triggered with respect to a Division), then the provisions of the proposed Corporation Default Rule would apply to the treatment of open, pending transactions of such Division.

FICC states that the Proposed Rule is designed to make clear, however, that neither Division would accept any transactions for processing after the Last Transaction Acceptance Date or which are designated to settle after the Last Settlement Date for such Division. Any transactions to be processed and/or settled after the Transfer Time would be required to be submitted to the Transferee, and would not be FICC's responsibility.

(iv) Notice Provisions

The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, FICC would provide its Members and Limited Members and its regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of the membership of both Divisions and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of FICC's business would be effected; (3) the Transfer Time, Last Transaction Acceptance Date, and Last Settlement Date; and (4) identification of Eligible Members and Eligible Limited Members, and the critical and non-critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Members and Non-Eligible Limited Members (as

[44] *See supra* note 14.

[45] *See supra* note 14.

defined in the Proposed Rule), and any non-critical services that would not be included in the transfer. FICC would also make available the rules and procedures and membership agreements of the Transferee.

(v) Transfer of Membership

The proposed Wind-down Rule would address the expected transfer of both Divisions' membership to the Transferee, which FICC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Therefore, the Wind-down Rule would provide Members, Limited Members and Settling Banks with notice that, in connection with the implementation of the Wind-down Plan and with no further action required by any party, (1) their membership with the applicable Division would transfer to the Transferee, (2) they would become party to a membership agreement with such Transferee, and (3) they would have all of the rights and be subject to all of the obligations applicable to their membership status under the rules of the Transferee. These provisions would not apply to any Member or Limited Member that is either in default of an obligation to FICC or has provided notice of its election to withdraw its membership from the applicable Division. Further, FICC states that the proposed Wind-down Rule is designed to make clear that it would not prohibit (1) Members and Limited Members that are not transferred by operation of the Wind-down Rule from applying for membership with the Transferee, or (2) Members, Limited Members, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee.[46]

(vi) Comparability Period

FICC states that the proposed automatic mechanism for the transfer of both Divisions' memberships is intended to provide the membership with continuous access to critical services in the event of FICC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. The proposed Wind-down Rule would provide that FICC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from FICC to the Transferee, for at least a period of time to be agreed upon (''Comparability Period''), the business transferred from FICC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by FICC. Specifically, the proposed Wind-down Rule would provide that: (1) The rules of the Transferee and terms of membership agreements would be comparable in substance and effect to the analogous Rules and membership agreements of FICC; (2) the rights and obligations of any Members, Limited Members and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to FICC; and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which such services were provided by FICC. FICC states that the purpose of these provisions and the intended effect of the proposed Wind-down Rule is to facilitate a smooth transition of FICC's business to a Transferee and to provide that, for at least the Comparability Period, the Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by FICC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new members of the Transferee.

(vii) Subordination of Claims Provisions and Miscellaneous Matters

The proposed Wind-down Rule would include a provision addressing the subordination of unsecured claims against FICC of its Members and Limited Members who fail to participate in FICC's recovery efforts (*i.e.,* firms delinquent in their obligations to FICC or elect to retire from FICC in order to minimize their obligations with respect to the allocation of losses, pursuant to the Rules). FICC states that this provision is designed to incentivize Members to participate in FICC's recovery efforts.[47]

The proposed Wind-down Rule would address other ex-ante matters, including provisions providing that its Members, Limited Members and Settling Banks (1) will assist and cooperate with FICC to effectuate the transfer of FICC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant FICC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by FICC pursuant to the Proposed Rule.

FICC states that the purpose of the limitation of liability is to facilitate and protect FICC's ability to act expeditiously in response to extraordinary events. Such limitation of liability would be available only following triggering of the Wind-down Plan. In addition, and as a separate matter, FICC states that the limitation of liability provides Members with transparency for the unlikely situation when those extraordinary events could occur, as well as supporting the legal framework within which FICC would take such actions. FICC states that these provisions, collectively, are designed to enable FICC to take such acts as the Board determines necessary to effectuate an orderly transfer and wind-down of its business should recovery efforts prove unsuccessful.

2. GSD Rule 50 and MBSD Rule 40 (Market Disruption and Force Majeure)

The proposed GSD Rule 50 and MBSD Rule 40 (Market Disruption and Force Majeure) (collectively, ''Force Majeure Rule'') would address FICC's authority to take certain actions upon the occurrence, and during the pendency, of a Market Disruption Event, as defined therein. FICC states that because GSD and MBSD are both divisions of FICC, the individual Force Majeure Rules are designed to work together. A decision by the Board or management of FICC that a Market Disruption Event has occurred in accordance with the Force Majeure Rule would trigger the provisions of the Force Majeure Rule of each Division simultaneously. The Proposed Rule is designed to clarify FICC's ability to take actions to address extraordinary events outside of the control of FICC and of the memberships of the Divisions, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed

[46] The Members and Limited Members whose membership is transferred to the Transferee pursuant to the proposed Wind-down Rule would submit transactions to be processed and settled subject to the rules and procedures of the Transferee, including any applicable margin charges or other financial obligations.

[47] Nothing in the proposed Wind-down Rule would seek to prevent a Member, Limited Member or Settling Bank that retired its membership at either of the Divisions from applying for membership with the Transferee. Once its FICC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, FICC would be entitled, during the pendency of a Market Disruption Event, to (1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require its Members and Limited Members to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of FICC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a Market Disruption Event. The proposed Force Majeure Rule would define the governance procedures for how FICC would determine whether, and how, to implement the provisions of the rule. A determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to the Commission, and advance consultation with Commission staff, when practicable, including notification when an event is no longer continuing and the relevant actions are terminated. The Proposed Rule would require Members and Limited Members to notify FICC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require FICC to notify Members and Limited Members if it has triggered the Proposed Rule and of actions taken or intended to be taken thereunder.

Finally, the Proposed Rule would address other related matters, including a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event. FICC states that the purpose of the limitation of liability would be similar to the purpose of the analogous provision in the proposed Wind-down Rule, which is to facilitate and protect FICC's ability to act expeditiously in response to extraordinary events.

3. Proposed Changes to GSD Rules, MBSD Rules, and EPN Rules

In order to incorporate the Proposed Rules into the Rules and the EPN Rules, FICC proposes to amend (1) GSD Rule 3A (Sponsoring Members and Sponsored Members), GSD Rule 3B (Centrally Cleared Institutional Triparty Service), and GSD Rule 13 (Funds-Only Settlement); (2) MBSD Rule 3A (Cash Settlement Bank Members); and (3) EPN Rule 1 (Definitions). FICC states that these proposed changes are designed to clarify that certain types of Limited Members, as identified in those rules, would be subject to the Proposed Rules.

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose 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 and strengthening the liquidity of systemically important financial market utilities.[48]

Section 805(a)(2) of the Clearing Supervision Act[49] authorizes the Commission to prescribe 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. Section 805(b) of the Clearing Supervision Act[50] provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[51] and Section 17A of the Act[52] (''Rule 17Ad–22'').[53] Rule 17Ad–22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[54] Therefore, it is appropriate for the Commission to review proposed changes in advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act[55] and against Rule 17Ad–22.[56]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposed changes in the Advance Notice are designed to help FICC promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. As described above, the R&W Plan, generally, would help FICC promote robust risk management and reduce systemic risks by providing FICC with a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Specifically, the Recovery Plan would provide a roadmap that would identify a number of triggers for the potential application of a number of available recovery tools. Identifying triggers for the potential application of recovery tools would help promote robust risk management and reduce systemic risks by better enabling FICC to more promptly determine when and how it may need to manage a significant stress event, and, as needed, stabilize its financial condition.

Similarly, the Force Majeure Rule is designed to provide a roadmap to address extraordinary events that may occur outside of FICC's control. Specifically, the Force Majeure Rule would define a Market Disruption Event and provide governance around determining when such an event has occurred. The Force Majeure Rule also would describe FICC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of FICC's services, if practicable. By defining a Market Disruption Event and providing such governance and authority, the Commission believes that the Force Majeure Rule also would help promote robust risk management and reduce systemic risks by improving FICC's ability to identify and manage a force majeure event, and, as needed, to stabilize its financial condition so that FICC can continue to operate and act as

[48] *See* 12 U.S.C. 5461(b).
[49] 12 U.S.C. 5464(a)(2).
[50] 12 U.S.C. 5464(b).
[51] 12 U.S.C. 5464(a)(2).
[52] 15 U.S.C. 78q–1.
[53] *See* 17 CFR 240.17Ad–22.
[54] *Id.*
[55] 12 U.S.C. 5464(b).
[56] *See* 17 CFR 240.17Ad–22.

a source of stability for the financial markets it serves.

The Commission believes that the Recovery Plan and the Force Majeure Rule reflect an approach designed to allow for a more considered and comprehensive evaluation by FICC of a stressed market situation and the ways in which FICC could apply available recovery tools in a manner intended to minimize the potential negative effects of the stress situation for FICC, its membership, and the broader financial system. Therefore, the Commission believes that the Recovery Plan and the Force Majeure Rule would help promote robust risk management at FICC and, thus, reduce systemic risks by establishing a means for FICC to best determine the most appropriate way to address such stress situations in an effective manner.

The Commission believes that the R&W Plan, generally, would help FICC promote safety and soundness and support the stability of the broader financial system by providing a roadmap to wind–down that is designed to ensure the availability of FICC's critical services to the marketplace, while reducing disruption to the operations of membership and financial markets that might be caused by FICC's failure. Specifically, as described above, the Wind–down Plan, as facilitated by the Wind–down Rule, would provide for the wind–down of FICC's business and transfer of membership and critical services if the recovery tools do not successfully return FICC to financial viability. Accordingly, critical services, such as services that lack alternative providers or products; services that the failure of which could impact the volume of transactions, transaction costs, or the flow of liquidity in the U.S. financial markets; and services that are interconnected with other participants and processes within the U.S. financial system would be able to continue in an orderly manner while FICC is seeking to wind–down its services. By designing the Wind–down Plan and the Wind–down Rule to enable the continuity of FICC's critical services and membership in an orderly manner while FICC is seeking to wind–down its services, the Commission believes these proposed changes would help FICC promote safety and soundness and support stability in the broader financial system in the event the Wind–down Plan is implemented.

As described above, to incorporate the Proposed Rules into the Rules and the EPN Rules, FICC proposes to amend (1) GSD Rule 3A (Sponsoring Members and Sponsored Members), GSD Rule 3B (Centrally Cleared Institutional Triparty Service), and GSD Rule 13 (Funds-Only Settlement); (2) MBSD Rule 3A (Cash Settlement Bank Members); and (3) EPN Rule 1 (Definitions). These proposed changes would clarify that certain types of Limited Members, as identified in those rules, would be subject to the Proposed Rules. These proposed changes would help these Limited Members readily understand their rights and obligations and would help enable Limited Members that are governed by the Proposed Rules to have a better understanding of the Proposed Rules. Enhanced access to and transparency of these rules would therefore assist such parties in understanding, planning for, and reacting in an orderly manner to, the implementation by FICC of the R&W Plan. Therefore, the Commission believes that these proposed changes to the Rules and the EPN Rules would help support the stability of the broader financial system.

By better enabling FICC to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, as described above, the Commission believes that the proposed changes in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[57]

B. Consistency With Rules 17Ad–22(e)(2)(i), (iii), and (v) Under the Act

Rule 17Ad–22(e)(2)(i) under the Act requires a covered clearing agency [58] to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[59] Rule 17Ad–22(e)(2)(iii) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that support the public interest requirements in Section 17A of the Act [60] applicable to clearing agencies, and the objectives of owners and participants.[61] Rule 17Ad–22(e)(2)(v) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.[62]

As described above, the R&W Plan is designed to identify clear lines of responsibility concerning the R&W Plan including (1) the ongoing development of the R&W Plan; (2) ongoing maintenance of the R&W Plan; (3) reviews and approval of the R&W Plan; and (4) the functioning and implementation of the R&W Plan. As described above, the R&R Team, which reports to the Management Committee, is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind–down planning process. Meanwhile, the Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and also would review and approve any changes that are proposed to the R&W Plan outside of the biennial review. Moreover, the R&W Plan would state the stages of escalation required to manage recovery under the Recovery Plan or to invoke FICC's wind–down under the Wind–down Plan, which would range from relevant business line managers up to the Board. The R&W Plan would identify the parties responsible for certain activities under both the Recovery Plan and the Wind–down Plan, and would describe their respective roles. The R&W Plan also would specify the process FICC would take to receive input from various parties at FICC, including management committees and the Board.

In considering the above, the Commission believes that the R&W Plan would help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent because it would specify lines of control. The Commission also believes that the R&W Plan would help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that support the public interest requirements in Section 17A of the Act [63] applicable to clearing

[57] 12 U.S.C. 5464(b).

[58] A ''covered clearing agency'' means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1 *et seq.*) that is designated systemically important by the Financial Stability Oversight Counsel (''FSOC'') pursuant to the Clearing Supervision Act (12 U.S.C. 5461 *et seq.*). *See* 17 CFR 240.17Ad–22(a)(5)–(6). On July 18, 2012, FSOC designated FICC as systemically important. U.S. Department of the Treasury, ''FSOC Makes First Designations in Effort to Protect Against Future Financial Crises,'' *available at https://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx*. Therefore, FICC is a covered clearing agency.

[59] 17 CFR 240.17Ad–22(e)(2)(i).

[60] 15 U.S.C. 78q–1.

[61] 17 CFR 240.17Ad–22(e)(2)(iii).

[62] 17 CFR 240.17Ad–22(e)(2)(v).

[63] 15 U.S.C. 78q–1.

agencies, and the objectives of owners and participants because the R&W Plan specifies the process FICC would take to receive input from various FICC stakeholders. In addition, the Commission believes that the R&W Plan would help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility because it specifies who is responsible for the ongoing development, maintenance, reviews, approval, functioning, and implementation of the R&W Plan.

Therefore, the Commission believes that the R&W Plan is consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v) under the Act.[64]

C. Consistency With Rule 17Ad–22(e)(3)(ii) Under the Act

Rule 17Ad–22(e)(3)(ii) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind–down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[65]

As described above, the R&W Plan's Recovery Plan provides a plan for FICC's recovery necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses by defining the risk management activities, stress conditions and indicators, and tools that FICC may use to address stress scenarios that could eventually prevent FICC from being able to provide its critical services as a going concern. More specifically, through the framework of the Crisis Continuum, which identifies tools that can be employed to mitigate losses and mitigate or minimize liquidity needs as the market environment becomes increasingly stressed, the Recovery Plan would identify measures that FICC may take to manage risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan also would address FICC's management of general business risks and other non-default risks that could lead to losses by identifying potential non-default losses and the resources available to FICC to address such losses, including recovery triggers and tools to mitigate such losses. Therefore, the Commission believes that the R&W Plan's Recovery Plan helps FICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by FICC, which includes a recovery plan necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

As described above, the R&W Plan's Wind-down Plan provides a plan for orderly wind-down of FICC, which would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning FICC to viability as a going concern. Once triggered, the Wind-down Plan sets forth mechanisms for the transfer of the membership of both Divisions and FICC's business, and it is designed to maintain continued access to FICC's critical services and to minimize market impact of the transfer while FICC is seeking to ultimately wind-down its services. Specifically, the Wind-down Plan would provide for the transfer of FICC's business, assets, and membership to another legal entity with such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Bankruptcy Code.[66] After effectuating this transfer, FICC would liquidate any remaining assets in an orderly manner in bankruptcy proceedings.

Although the Commission is not opining on the Wind-down Plan's consistency with the U.S. Bankruptcy Code, in reviewing the proposed changes, the Commission believes that FICC's intent to use bankruptcy proceedings to achieve an orderly liquidation of assets after any transfer of FICC's business appears reasonable, in light of the provisions of the Bankruptcy Code that address the liquidation and distribution of a debtor's property among creditors and interest holders.[67] Under many circumstances, Section 363 of the Bankruptcy Code provides for the sale of property ''free and clear of any interest in such property of an entity other than the estate[.]''[68] The Commission believes that FICC's analysis regarding the applicability of these provisions, while not free from doubt, presents a reasonable approach to liquidation in light of the circumstances and the available alternatives.[69] Therefore, the Commission believes that the R&W Plan's Wind-down Plan helps FICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by FICC, which includes a wind-down plan necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

Therefore, the Commission believes that the R&W Plan is consistent with Rule 17Ad–22(e)(3)(ii) under the Act.[70]

D. Consistency With Rules 17Ad–22(e)(15)(i)–(ii) Under the Act

Rule 17Ad–22(e)(15)(i) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.[71] Rule 17Ad–22(e)(15)(ii) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by holding liquid net assets funded by equity equal to the greater of either (x) six months of the

[64] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[65] 17 CFR 240.17Ad–22(e)(3)(ii).

[66] 11 U.S.C. 101 *et seq.*

[67] *See, e.g.,* 11 U.S.C. 363, 726, and 1129(a)(7).

[68] *See* 11 U.S.C. 363(f).

[69] The Wind-down Plan would identify certain factors the Board may consider in evaluating alternatives, which would include, for example, whether FICC could safely stabilize the business and protect its value without seeking bankruptcy protection, and FICC's ability to continue to meet its regulatory requirements.

[70] 17 CFR 240.17Ad–22(e)(3)(ii).

[71] 17 CFR 240.17Ad–22(e)(15)(i).

covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad–22(e)(3)(ii) under the Act,[72] discussed above.[73]

As discussed above, FICC's Capital Policy is designed to address how FICC holds LNA in compliance with these requirements,[74] while the Wind-down Plan would include an analysis to estimate the amount of time and cost to achieve a recovery or orderly wind-down of FICC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan also would provide that the estimate would be the Recovery/Wind-down Capital Requirement under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the amount of LNA that FICC plans to hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, the Commission believes that the R&W Plan is consistent with Rules 17Ad–22(e)(15)(i) and (ii) under the Act.[75]

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[76] that the Commission DOES NOT OBJECT to advance notice SR–FICC–2017–805, as modified by Amendment No. 1, and that FICC is *authorized* to implement the proposal as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–FICC–2017–021, as modified by Amendment No. 1, whichever is later.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18868 Filed 8–29–18; 8:45 am]

BILLING CODE 8011–01–P

[72] 17 CFR 240.17Ad–22(e)(3)(ii).

[73] 17 CFR 240.17Ad–22(e)(15)(ii).

[74] *Supra* note 14.

[75] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[76] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33214; File No. 812–14837]

Innovator ETFs Trust, et al.

August 24, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, business development companies, as defined in section 2(a)(48) of the Act (''BDCs''), and registered unit investment trusts (collectively, ''Underlying Funds'') that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

APPLICANTS: Innovator ETFs Trust (the ''Trust''), a Delaware statutory trust that is registered under the Act as an open-end management investment company with multiple series, Innovator Capital Management, LLC (the ''Initial Adviser''), a limited liability company organized under the laws of the state of Delaware that is registered as an investment adviser under the Investment Advisers Act of 1940, and Foreside Fund Services, LLC (the ''Distributor''), registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and a member of the Financial Industry Regulatory Authority.

FILING DATES: The application was filed on October 31, 2017, and amended on May 1, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 18, 2018, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Innovator ETFs Trust and Innovator Capital Management, LLC, 120 North Hale Street, Suite 200, Wheaton, IL 60187; Foreside Fund Services, LLC, Three Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order to permit (a) each Fund [1] (each a ''Fund of Funds'') to acquire shares of Underlying Funds [2] in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) each Underlying Fund that is a registered open-end management

[1] Applicants request that the order apply not only to the existing series of the Trust (the ''Initial Funds''), but that the order also extend to any future series of the Trust and any other existing or future registered open-end management investment companies and any series thereof that are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust and are, or may in the future be, advised by the Initial Adviser or its successor or any other investment adviser controlling, controlled by, or under common control with the Initial Adviser or its successor (together with the Initial Funds, each series a ''Fund,'' and collectively, the ''Funds''). Applicants further request that the order also apply to any future principal underwriter and distributor for a Fund. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the request for relief, the term ''group of investment companies'' means any two or more registered investment companies, including closed-end investment companies, and BDCs, that hold themselves out to investors as related companies for purposes of investment and investor services.

[2] Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as an exchange-traded fund (''ETF'').

investment company or series thereof, their principal underwriters, and any broker or dealer registered under the 1934 Act to sell shares of the Underlying Funds to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.[3] Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.[4] Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same ''group of investment companies'' as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18776 Filed 8–29–18; 8:45 am]

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[3] Applicants are not requesting relief for a Fund of Funds to invest in BDCs and registered closed-end investment companies that are not listed and traded on a national securities exchange.

[4] A Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF or closed-end fund through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each ETF or closed-end fund that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund of Funds, to sell shares to or redeem shares from the Fund of Funds. This includes, in the case of sales and redemptions of shares of ETFs, the in-kind transactions that accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF, BDC or closed-end fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF, BDC or closed-end fund or an entity controlling, controlled by or under common control with the investment adviser to the ETF, BDC or closed-end fund, is also an investment adviser to the Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83949; File No. SR–BOX–2018–26]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect a Non-Substantive Name Change in the Market's Governing Documents

August 27, 2018.

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 August 15, 2018, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a non-substantive name change in the Market's governing documents. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to reflect a non-substantive name change in the Market's governing documents. On July 13, 2018, the BOX Market LLC Board of Directors approved that the name of BOX Market LLC be changed to ''BOX Options Market LLC'' and that each officer of the Company be, and hereby is, authorized and directed to undertake any actions required or advisable to carry out the name change, including with respect to the SEC and any governmental or third parties. The Exchange intends for these changes to be effective upon filing.

As proposed, references to the Market's name will be deleted and revised to state the new name, as described more fully below. No other substantive changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Market, a facility of the Exchange, and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is any way. Accordingly, this filing is being submitted under Rule 19b–4(f)(3). In lieu of providing a copy of the marked name changes for all corporate documents, the Exchange represents that it will make the necessary non-substantive revisions described below to the applicable corporate governance documents and post updated versions of

each on the Exchange's website pursuant to Rule 19b–4(m)(2).

Market Name Change

In connection with the name change of the Market, the Exchange is proposing to amend the Market's operative documents. Specifically, the Exchange proposes to amend the Market's Certificate of Amendment [sic], and the BOX Market LLC Agreement.[3] Within these documents the Exchange proposes to delete all references to BOX Market LLC (''BOX Market'' or ''BOX'') and replace it with BOX Options Market LLC (''BOX Options Market'' or ''BOX Options'').

Additionally, in connection with the name change of the Market, the Exchange is proposing to make non-substantive conforming changes to the BOX Holdings LLC Agreement and the BOX Exchange LLC Agreement. Specifically, the Exchange proposes to delete all references to BOX Market LLC and replace it with ''BOX Options Market LLC'' in these documents.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(1)[5] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associate with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the proposed change is a non-substantive change and does not impact the governance, ownership or operations of the Exchange. The Exchange believes that by ensuring that the Exchanges operative documents accurately reflect the new legal names, the proposed rule change would reduce potential investor or market participant confusion.

Further, the Exchange believes that the proposed deletion of obsolete references would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the change would eliminate an obsolete reference to Old BOX, thereby reducing potential confusion. Market participants and investors would not be harmed and in fact could benefit from the increased clarity and transparency in the Market LLC Agreement, ensuring that market participants could more easily understand the Market LLC Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Exchange's governance and operative documents to reflect the abovementioned name changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act[6] and Rule 19b–4(f)(3) thereunder in that the proposed rule changes is concerned solely with the administration of the Exchange.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2018–26 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BOX–2018–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2018–26 and should be submitted on or before September 20, 2018.

[3] The Exchange is also proposing to delete obsolete references within the Market LLC Agreement. Specifically, the Exchange proposes to remove all references to the Boston Options Exchange Group LLC (''Old BOX''), which merged into what is now BOX Market LLC on May 12, 2012. The Exchange believes references to the Old BOX within the Market LLC agreement are no longer necessary or appropriate within the BOX Options Market LLC Amended and Restated Agreement.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18826 Filed 8–29–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83940; File No. SR–DTC–2018–006]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of Proposed Rule Change To Amend Rule 35 To Provide for Designated Accounts for Use With Designated Collateral Management Service Providers

August 24, 2018.

On July 9, 2018, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2018–006 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on July 24, 2018.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change would amend the Rules, By-Laws and Organization Certificate of The Depository Trust Company (''DTC Rules'')[4] to revise DTC's current Rule 35—CMS Reporting (''Rule 35'').

A. Background

Currently, Rule 35 provides that a Participant of DTC (''Participant'') may establish a collateral management service (''CMS'')[5] sub-account (''CMS Sub-Account''), which authorizes DTCC Euroclear Global Collateral Ltd. (''DEGCL'')[6] to receive from DTC (i) a CMS report that provides information regarding securities credited to the CMS Sub-Account of such Participant at the time of the report (''CMS Report''), and (ii) CMS delivery information that provides real-time information regarding any delivery or pledge from, or delivery or release to, the CMS Sub-Account (''CMS Delivery Information'').[7]

B. The Proposed Rule Change

DTC proposes five changes to Rule 35: (1) Adding the term ''CMSP'' (*i.e.,* a CMS provider) and its associated function; (2) adding the term ''CMSP Accounts'' and its associated function; (3) adding the term ''CMSP Reports'' and its associated function; (4) authorizing a CMSP to submit CMSP instructions (''CMSP Instructions'') on behalf of a Participant or a Pledgee of DTC (''Pledgee''); and (5) making ministerial changes to conform with the proposed changes, as well as making stylistic edits.[8] Each of these proposed changes is described below.

1. CMSP

The proposal would add to Rule 35 the term and function of a CMSP, which a Participant or Pledgee could then designate to act on its behalf under the rule, pursuant to the proposed changes.[9] The term CMSP would replace the existing, singular designation of DEGCL to act under Rule 35 as a collateral management provider.[10] A partnership, corporation, or other organization or entity could become a CMSP, under the proposed changes to Rule 35, if it satisfies three proposed criteria: (1) One or more Participants or Pledgees designate the entity as a CMSP for purposes of Rule 35; (2) the entity (i) satisfies at least one of the qualifications set forth in Section 1(a)–(h) of Rule 3[11] or (ii) is organized in a country other than the United States, is regulated by a financial regulatory authority in the country in which it is organized, and demonstrates that it has notified the Commission in writing of its intention to operate under Rule 35;[12] and (3) the entity establishes a connection to DTC, in accordance with the reasonable requirements of DTC, in order to be able to receive position and transaction information and to submit instructions to DTC in accordance with the DTC Rules and Procedures.[13]

As proposed, DTC may decline to accept an entity as a CMSP if it would present material risk to DTC, its Participants and Pledgees, or impose material costs to DTC.[14] DTC states that some examples of circumstances in which DTC might reject an applicant as a CMSP include when DTC reasonably believes that acceptance of the applicant as a CMSP would (i) subject DTC to additional legal or regulatory regimes, to which it is not otherwise subject; (ii) expose DTC to additional technology risk; or (iii) cause DTC to be in violation of applicable law or regulation.[15]

2. CMSP Account

The proposed rule change would add the term and function of a ''CMSP Account'' to Rule 35.[16] Currently, Rule 35 requires a Participant looking to utilize the services offered through Rule 35 to designate an account for such

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No.83667 (July 18, 2018), 83 FR 35044 (July 24, 2018) (SR–DTC–2018–006) (''Notice'').

[4] *Available at http://www.dtcc.com/legal/rules-and-procedures.aspx.* Each capitalized term not otherwise defined herein has its respective meaning as set forth in the DTC Rules.

[5] Collateral management generally involves calculating collateral requirements and facilitating the transfer of collateral between counterparties. *See* Securities Exchange Act Release No. 64796 (July 1, 2011), 76 FR 39963, 39964 (July 7, 2011) (S7–28–11).

[6] DEGCL is a joint venture of The Depository Trust & Clearing Corporation, the corporate parent of DTC, and Euroclear S.A./N.V. and was formed for the purpose of offering global information, record keeping, and processing services for derivatives collateral transactions and other types of financing transactions. DEGCL offers service options for the selection of collateral to satisfy the collateral obligations of its users (''DEGCL CMS''). *See* Securities Exchange Act Release No. 80280 (March 20, 2017), 82 FR 15081 (March 24, 2017) (SR–DTC–2017–001) (''CMS Order'') (providing additional information on DEGCL and DEGCL CMS). One option relates exclusively to Securities held at DTC, and is dependent on Rule 35. *Id.*

[7] CMS Order, 82 FR at 21838.

[8] Notice, 83 FR at 35044–45.

[9] Notice, 83 FR at 35045.

[10] *Id.*

[11] Sections 1(a)–(h) of Rule 3 provide the qualifications for a partnership, corporation or other organization or entity to be eligible to become a Participant. *See* DTC Rules, Rule 3, Sections 1(a)–(h), *supra* note 4.

[12] DTC states that in order to protect DTC, its Participants and Pledgees, a CMSP that wishes to act under the proposed changes to Rule 35 would need to be subject to regulatory oversight comparable to a Participant, as provided in proposed Section 2(b)(i) of Rule 35, or, if the entity is organized in a country other than the United States (a ''non-U.S. entity''), it would need to be regulated by a financial regulatory authority in the country in which it is organized, as provided in proposed Section 2(b)(ii) of Rule 35. Notice, 83 FR at 35045. Further, the proposed rule change would require that, in order to be eligible to become a CMSP, the non-U.S. entity must notify the Commission in writing of its intention to operate under Rule 35, as modified by the proposed changes. *Id.* While DTC reserves the right to request documentation and/or information relating to a CMSP's compliance with the requirements of proposed Section 2 of Rule 35, it would be the sole responsibility of the Participant or Pledgee to evaluate and choose an appropriate CMSP that, at a minimum, satisfies the requirements. *Id.* Under proposed Section 2 of Rule 35, the designating Participant or Pledgee would remain liable as principal for the actions of its designated CMSP(s) on its behalf, and would indemnify DTC for any loss, liability, or expense as a result of any claim arising from (i) any act or omission of the CMSP, (ii) the provision of CMSP Reports to the CMSP by DTC, or (iii) DTC's compliance with instructions of the CMSP. *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

purposes (*i.e.,* a CMS Sub-Account).[17] A Pledgee, however, is not permitted to designate a CMS Sub-Account under the existing Rule 35.

The proposed CMSP Account would replace the concept of the existing CMS Sub-Account and would allow either a Participant or a Pledgee to designate any account as a CMSP Account.[18] Once established, a CMSP Account would allow the designated CMSP access and authority to provide instruction to DTC (as further described below) for the Delivery, Pledge, or Release of securities on behalf of a Participant or Pledgee, as applicable.[19] As proposed, a Participant or Pledgee could designate one or more CMSP Accounts and, concurrently, designate one or more CMSPs with respect to each CMSP Account.[20]

A Participant's or Pledgee's designation of a CMSP for a CMSP Account would serve four functions: (1) The appointment of the CMSP to act on its Participant's or Pledgee's behalf for the purposes of Rule 35; (2) the authorization of the CMSP to receive CMSP Reports and to provide CMSP Instructions on behalf of its Participant or Pledgee; (3) the authorization of DTC to act in accordance with any CMSP Instruction of a Participant's or Pledgee's designated CMSP; and (4) the representation and warranty of the Participant or Pledgee that it is duly authorized to instruct DTC to provide CMSP Reports to the CMSP and to act in accordance with any CMSP Instruction.[21]

The proposed rule change would not substantially alter the current liability and indemnification provisions provided for in Rule 35.[22] Specifically, the proposed rule change would provide that each Participant and Pledgee that designates a CMSP would indemnify DTC, and any nominee of DTC, against any loss, liability or expense as a result of any claim arising from the compliance of DTC with CMSP Instructions, except to the extent such loss, liability, or expense is caused directly by the DTC's gross negligence or willful misconduct.[23]

3. CMSP Reports

Rule 35 currently authorizes DEGCL, and only DEGCL, to receive position and transaction information from DTC on behalf of a Participant in the form of CMS Delivery Information and CMS Reports.[24] The proposed rule change would permit a Participant or Pledgee to authorize a CMSP, which may or may not be DEGCL, to receive CMSP Reports (with respect to CMSP Accounts for which the CMSP is designated).[25] The CMSP Information and CMSP Position Report are analogous to the reports currently provided to DEGCL under Rule 35 (*i.e.,* CMS Report and CMS Delivery Information, respectively).[26]

Currently, Rule 35 defines ''CMS Delivery Information'' to mean, ''with respect to CMS Securities and any Delivery or Pledge thereof from, or Delivery or Release thereof to, a CMS Sub-Account, a copy of any Delivery, Pledge, or Release message sent to the CMS Participant by DTC, including the following information: (x) The CUSIP, ISIN, or other identification number of such CMS Securities, and (y) the number of shares or other units or principal amount of such CMS Securities.'' [27] DTC states that this definition was drafted to align with DEGCL specifications.[28]

Pursuant to the proposed rule change, the definition of ''CMSP Information'' would be drafted in more general terms to provide flexibility for the different collateral management service offerings of CMSPs (in addition to DEGCL).[29] Pursuant to the proposed rule change, ''CMSP Information'' would mean, ''with respect to a CMSP Account of a Participant or Pledgee, a copy of any message sent to the Participant or Pledgee by the Corporation.'' [30] These messages would include, but would not be limited to, the Delivery, Pledge, and Release messages referenced in the definition of CMS Delivery Information in existing Rule 35.[31]

Similarly, Rule 35 currently defines ''CMS Report'' to mean, ''with respect to a CMS Participant and its CMS Sub-Account, the following information identifying the CMS Securities that are, at the time of such report, credited to such CMS Sub-Account: (i) The CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities.'' [32] DTC states that this definition was drafted to align with DEGCL specifications.[33] Pursuant to the proposed rule change, the specific language ''(i) the CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities'' would be deleted from the definition of ''CMSP Position Reports.'' [34]

Finally, similar to what is provided for in Rule 35 today, the proposed changes would provide that DTC would have no liability to any Participant or Pledgee as a result of providing one or more CMSP Reports to any CMSP pursuant to proposed Section 5 of Rule 35.[35]

4. CMSP Instructions

The proposed rule change would provide that a CMSP would be authorized to instruct DTC, on behalf of the Participant or Pledgee, for the Delivery, Pledge, or Release of securities credited to such Participant or Pledgee's CMSP Account, as applicable.[36] CMSP Instructions would be subject to the terms and conditions of the DTC Rules and Procedures applicable to Deliveries, Pledges, and Releases of securities generally, including risk management controls.[37] DTC states that the purpose of this proposed change is to streamline collateral processing by CMSPs by allowing them to receive information directly from DTC and to take direct action on that information through CMSP Instructions, on behalf of Participants and Pledgees.[38]

The proposal would not preclude instructions by the Participant or Pledgee itself, or CMSP Instructions by another CMSP, with respect to the same

[17] *Id.*

[18] *Id.*

[19] *Id.* The proposed rule change would specify that, with respect to a CMSP Account, a Participant or Pledgee would retain the right to instruct DTC as otherwise provided in the DTC Rules and Procedures. *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] Notice, 83 FR at 35046.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] For a CMSP Account of a Participant, that would include Delivery or Pledge. *Id.* For a CMSP Account of a Pledgee, that would include Delivery or Release. *Id.*

[37] DTC states that its risk management controls, including Collateral Monitor and Net Debit Cap (as defined in Rule 1, Section 1 of the Rules), are designed so that DTC may complete system-wide settlement notwithstanding the failure to settle of its largest Participant or Affiliated Family of Participants. *Id.* The Collateral Monitor tests whether a Participant has sufficient collateral for DTC to pledge or liquidate if that Participant were to fail to meet its settlement obligation. *Id.* Pursuant to these controls under applicable DTC Rules and Procedures, DTC states that it would not process any Delivery or Pledge instruction order from a CMSP Account that would cause the Participant to exceed its Net Debit Cap or to have insufficient DTC Collateral to secure its obligations to DTC. *Id.* DTC states that Deliveries would be processed in the same order and with the same priority as otherwise provided in the DTC Rules and Procedures (*i.e.,* such Deliveries and Pledges would not take precedence over any other type of Delivery or Pledge in the DTC system). *Id.*

[38] *Id.*

CMSP Account.[39] Furthermore, the proposed changes to Rule 35 would provide that DTC has no liability (i) to a Participant or Pledgee for acting in accordance with, or relying upon, CMSP Instructions, or (ii) to any CMSP as a result of DTC acting in accordance with, or relying upon, instructions of any other Person, including, but not limited to, the Participant or Pledgee or any other designated CMSP.[40]

5. Ministerial Changes

In connection with the foregoing, DTC proposes the following ministerial changes to Rule 35 in order to conform the existing rule text to the proposed changes, as well as to make stylistic edits:[41]

Title. DTC proposes to replace the current title ''CMS Reporting'' with ''CMSP Reports and Instructions,'' to reflect the amended substance of the proposed rule.[42]

Section 1. For stylistic consistency, DTC proposes to insert the title ''Certain Defined Terms'' for Section 1.[43] DTC further proposes to (i) delete the definitions of CMS, CMS Participant, CMS Representative, CMS Securities, DEGCL, and DTCC; (ii) add definitions for CMSP, CMSP Account, CMSP Instruction, and CMSP Reports; (iii) replace the defined term ''CMS Delivery Information'' with ''CMSP Information'' and simplify the definition by referring to ''a copy of any message sent to the Participant or Pledgee'' with respect to a CMSP Account, instead of ''a copy of any Delivery, Pledge, or Release message sent to the CMS Participant by DTC, including the following information: (x) The CUSIP, ISIN, or other identification number of such CMS Securities, and (y) the number of shares or other units or principal amount of such CMS Securities''; and (iv) replace the defined term ''CMS Report'' with ''CMSP Position Report'' and simplify the definition by removing the DEGCL specifications of ''(i) the CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities.''[44]

Proposed Section 2 (New). DTC proposes to insert a new proposed Section 2, titled ''Qualification as a CMSP.''[45] This section would identify the aforementioned requirements that an entity must satisfy to become a CMSP.[46]

Section 2 (Proposed Section 3). DTC proposes to renumber Section 2 to Section 3, and to change the title of proposed Section 3 to ''CMSP Accounts.''[47] DTC also proposes to modify subsection (a) to delete DEGCL CMS-specific terms and to reflect that (i) a Participant or Pledgee can designate one or more CMSP Accounts, as well as designate one or more CMSPs for each CMSP Account, and (ii) as noted above, describe what the designation of a CMSP entails, with respect to a CMSP Account by a Participant or Pledgee would constitute.[48] DTC further proposes to modify subsection (b) to remove CMS-specific references, to reflect the inclusion of Pledgees, CMSPs, and CMSP Instruction in the proposed rule, and to make ministerial changes.[49] Additionally, DTC proposes to remove subsection (c) as it would be no longer relevant because it relates exclusively to DEGCL.[50]

Section 3 (Proposed Section 4). DTC proposes to renumber Section 3 as Section 4, and to change the title of the section to ''Instructions on a CMSP Account.''[51] DTC further proposes to (i) modify subsection (a) to remove provisions relating to the transfer of securities to a CMS Sub-Account, and to insert a provision stating that a Participant or Pledgee retains its right to instruct DTC with respect to its CMSP Account, and (ii) modify subsection (b) to remove provisions relating to the transfer of securities to a CMS Sub-Account, and to insert a provision specifying that a CMSP may instruct the Delivery, Pledge, or Release of securities to or from a CMSP Account for which it is designated pursuant to proposed Section 3 of Rule 35.[52] Further, DTC proposes to insert the new subsection (c) that would state that all Deliveries, Pledges, and Releases to or from a CMSP Account would be subject to the terms and conditions of the DTC Rules and Procedures applicable to Deliveries, Pledges, and Releases of securities generally.[53]

Section 4. DTC proposes to delete this section, as it relates to DEGCL specifications for a CMS Report.[54]

Section 5. DTC proposes to replace the current title of ''CMS Delivery Information'' with ''CMSP Reports.''[55] DTC is further proposing to insert proposed subsection (a) to provide for the provision of CMSP Position Reports and CMSP Information to each CMSP for each CMSP Account for which it is designated.[56] DTC additionally proposes to delete language relating to DEGCL-specific requirements regarding ''CMS Delivery Information.''[57] Further, DTC proposes to incorporate the remaining language of Section 5, modified to conform to the defined terms of the proposed rule change, into proposed subsection (b).[58]

Section 6. DTC proposes to modify the section to (i) add references to CMSPs, Pledgees, CMSP Reports, and CMSP Instructions, (ii) remove references to CMS Participant, CMS Report, Delivery Information, and CMS Representative, and (iii) update a cross-reference relating to CMSP Reports.[59] DTC further proposes to add disclaimers of liability to (i) a Participant or Pledgee for acting in accordance with, or relying upon, CMSP Instructions, or (ii) any CMSP as a result of DTC acting in accordance with, or relying upon, instructions of any other Person, including, but not limited to, the Participant or Pledgee or any other designated CMSP, with respect to a CMSP Account.[60]

For additional clarity, DTC also proposes to make ministerial changes to (i) update articles, pronouns, and determiners, and (ii) modify language for stylistic conformity within the proposed rule.[61]

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[62] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with the Act, specifically Section 17A(b)(3)(F) of the Act and Rule 17Ad–22(e)(21) under the Act.[63]

[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] Notice, 83 FR at 35046–7.
[49] Notice, 83 FR at 35047.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] 15 U.S.C. 78s(b)(2)(C).
[63] 15 U.S.C. 78q–1(b)(3)(F); 17 CFR 240.17Ad–22(20).

A. Consistency With Section 17A

Section 17A(b)(3)(F) of the Act [64] requires, *inter alia,* that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

As described above, DTC proposes to make five core changes to Rule 35. First, DTC proposes to no longer reference DEGCL as the sole CMS provider under Rule 35 but, instead, to reference the new term CMSP and its associated functions. Specifically, the proposed change would allow any otherwise eligible partnership, corporation, or other organization or entity that meets the proposed criteria to offer collateral management services through DTC for the purpose of Rule 35. The Commission believes that by expanding Rule 35 to include a broader concept of a CMSP, not just one specific CMSP (*i.e.,* DEGCL), the proposed change (i) opens up the opportunity for other collateral management providers to compete in offering their services under Rule 35, and (ii) affords Participants and Pledgees the opportunity to evaluate whether another entity could better meet its collateral management requirements. By increasing the opportunity for competition and selection, the proposed change should help collateral management providers, Participants, and Pledgees be better positioned to more efficiently effect the settlement of collateral transactions under Rule 35. Therefore, the change would help promote the prompt and accurate clearance and settlement of securities transactions.

Second, as described above, DTC proposes to add to Rule 35 the term CMSP Account and its associated functions. As proposed, a CMSP Account would allow Pledgees, not just Participants, to use collateral management service offerings of CMSPs for the purposes of Rule 35. By establishing the ability for Pledgees to utilize collateral management services under Rule 35, through the proposed CMSP Account, the proposal affords Pledgees the same opportunities to manage such collateral transactions through DTC as Participants. The Commission believes that expanding Rule 35 to include Pledgees should help Pledgees more efficiently effect the settlement of their collateral transactions at DTC, thus helping to promote the prompt and accurate clearance and settlement of such securities transactions.

Third, as described above, DTC proposes to add to Rule 35 the term CMSP Reports and its associated functions; namely, the CMSP Position Report and the CMSP Information. The CMSP Position Report would enable the CMSP to know what securities are credited to a Participant or Pledgee's CMSP Account each day, while the CMSP Information would allow the CMSP to know the Participant's or the Pledgee's real-time correspondence with DTC. These two reports are designed to furnish the CMSP with information needed to calculate collateral requirements and facilitate the transfer of collateral between counterparties. As such, the Commission believes that the CMSP Position Report and CMSP Information would assist CMSPs in providing collateral management services, and thereby, promote the prompt and accurate clearance and settlement of those securities transactions.

Fourth, as described above, the proposed rule change would allow a CMSP to instruct DTC to Deliver, Pledge, or Release securities credited to a CMSP Account, on behalf of a Participant or Pledgee. In doing so, the proposed rule change should help reduce the number of actions that a Participant or Pledgee that uses a CMSP would need to take in order to effect the settlement of collateral transactions at DTC. The Commission believes that the proposal would thereby help add efficiency to the clearance and settlement process by providing straight-through submission and processing of settlement instructions by a CMSP, without further actions by the Participant or Pledgee. As such, the proposed CMSP Instructions would help promote the prompt and accurate clearance and settlement of securities transactions.

Fifth, as described above, the proposal would make ministerial changes to Rule 35 to conform the existing language in Rule 35 to the proposed changes. The proposal would also make various stylistic edits to the rule text. These changes are designed to help ensure that the final rule text is coherent and all cross-references within the rule text are current. The Commission believes the ministerial and stylistic changes thereby would help Participants and Pledgees to better understand their rights and obligations with respect to the collateral management services provide under Rule 35. Therefore, the changes would help promote the prompt and accurate clearance and settlement of such transactions.

As each of the aforementioned changes is designed to promote the prompt and accurate clearance and settlement of securities transactions, the Commission finds that the proposal is consistent with the requirements Section 17A(b)(3)(F).

B. Consistency With Rule 17Ad–22(e)(21)

Rule 17Ad–22(e)(21) promulgated under the Act requires, *inter alia,* a covered clearing agency [65] to establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.[66]

As described above, the proposal would amend Rule 35 to, generally, (i) broaden what entities may serve as a CMSP, (ii) allow Participants and Pledgees to utilize the services offered by Rule 35, (iii) and permit Participants and Pledgees to designate one or more CMSPs, with respect to a CMSP Account, to provide CMSP Instructions, as well as receive CMSP Information and CMSP Position Reports. With these proposed changes, the Commission believes that the proposal would grant both Participants and Pledgees the flexibility to establish and structure their respective CMSP Accounts, including the eligible CMSP that would service the accounts, in a manner that is most effective and efficient for the collateral management needs of that Participant or Pledgee and for the specifications of its designated CMSP(s).

The proposed rule change also would make ministerial revisions and stylistic edits to Rule 35, as described above. These changes are designed to help Participants and Pledgees better understand their rights and obligations with respect to the services offered under Rule 35. By helping Participants and Pledgees better understand their rights and obligations with respect to Rule 35, the Commission believes that the proposed changes are designed to be efficient and effective in meeting the requirements of Participants and Pledgees that take advantage of DTC's collateral management services under Rule 35.

[64] 15 U.S.C. 78q–1(b)(3)(F).

[65] A ''covered clearing agency'' means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1 *et seq.*) that is designated systemically important by the Financial Stability Oversight Counsel (''FSOC'') pursuant to the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*). *See* 17 CFR 240.17Ad–22(a)(5)–(6). On July 18, 2012, FSOC designated DTC as systemically important. U.S. Department of the Treasury, ''FSOC Makes First Designations in Effort to Protect Against Future Financial Crises,'' *available at https://www.treasury.gov/press-center/press-releases/Pages/tg1645.asp.* Therefore, DTC is a covered clearing agency.

[66] 17 CFR 240.17Ad–22(e)(21).

Therefore, the Commission finds that the proposal is designed to be efficient and effective in meeting the requirements of Participants and Pledgees, consistent with Rule 17Ad–22(e)(21) under the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act[67] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–DTC–2018–006 be, and hereby is, *approved.*[68]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18784 Filed 8–29–18; 8:45 am]

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[67] 15 U.S.C. 78q–1.

[68] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83953; File No. SR–DTC–2017–803]

Self-Regulatory Organizations; The Depository Trust Company; Notice of No Objection to an Advance Notice, as Modified by Amendment No. 1, To Adopt a Recovery & Wind-Down Plan and Related Rules

August 27, 2018.

On December 18, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–DTC–2017–803 pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act'')[2] to adopt a recovery and wind-down plan (''R&W Plan'') and related rules.[3] The advance notice was published for comment in the **Federal Register** on January 30, 2018.[4] In that publication, the Commission also extended the review period of the advance notice for an additional 60 days, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[5] On April 10, 2018, the Commission required additional information from DTC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,[6] which tolled the Commission's period of review of the advance notice until 60 days from the date the information required by the Commission was received by the Commission.[7] On June 28, 2018, DTC filed Amendment No. 1 to the advance notice to amend and replace in its entirety the advance notice as originally filed on December 18, 2017.[8] On July 6, 2018, the Commission received a response to its request for additional information in consideration of the advance notice, which, in turn, added a further 60-days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act.[9] The Commission did not receive any comments. This publication serves as notice that the Commission does not object to the proposed changes set forth in the advance notice, as modified by Amendment No. 1 (hereinafter, ''Advance Notice'').

I. Description of the Advance Notice

In the Advance Notice, DTC proposes to (1) adopt an R&W Plan; and (2) amend the Rules, By-Laws and Organization Certificate of DTC (''Rules'')[10] to adopt Rule 32(A) (Wind-down of the Corporation) and Rule 38 (Market Disruption and Force Majeure) (each proposed Rule 32(A) and proposed Rule 38, a ''Proposed Rule'' and, collectively, the ''Proposed Rules'').

DTC states that the R&W Plan would be used by the Board of Directors of DTC (''Board'') and DTC's management in the event DTC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern.

DTC states that the Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow DTC to effectuate its strategy for winding down and transferring its business; (2) provide Participants with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations; and (3) provide DTC with the legal basis to implement those provisions of the R&W Plan when necessary.

A. DTC R&W Plan

The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to DTC to either (i) recover, in the event it

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On December 18, 2017, DTC filed the advance notice as proposed rule change SR–DTC–2017–021 with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on January 8, 2018. Securities Exchange Act Release No. 82432 (January 2, 2018), 83 FR 884 (January 8, 2018) (SR–DTC–2017–021). On February 8, 2018, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82669 (February 8, 2018), 83 FR 6653 (February 14, 2018) (SR–DTC–2017–021, SR–FICC–2017–021, SR–NSCC–2017–017). On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82912 (March 20, 2018), 83 FR 12999 (March 26, 2018) (SR–DTC–2017–021). On June 25, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 83509 (June 25, 2018), 83 FR 30785 (June 29, 2018) (SR–DTC–2017–021, SR–FICC–2017–021, SR–NSCC–2017–017). On June 28, 2018, DTC filed Amendment No. 1 to the Proposed Rule Change. Securities Exchange Act Release No. 83628 (July 13, 2018), 83 FR 34263 (July 19, 2018) (SR–DTC–2017–021). DTC submitted a courtesy copy of Amendment No. 1 to the Proposed Rule Change through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the Proposed Rule Change has been publicly available on the Commission's website at *https://www.sec.gov/rules/sro/dtc.htm* since June 29, 2018. The Commission did not receive any comments. The proposal, as set forth in both the advance notice and the Proposed Rule Change, each as modified by Amendments No. 1, shall not take effect until all required regulatory actions are completed.

[4] Securities Exchange Act Release No. 82579 (January 24, 2018), 83 FR 4310 (January 30, 2018) (SR–DTC–2017–803) (''Notice'').

[5] Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H). The Commission found that the advance notice raised novel and complex issues and, accordingly, extended the review period of the advance notice for an additional 60 days until April 17, 2018. *See* Notice, *supra* note 4.

[6] 12 U.S.C. 5465(e)(1)(D).

[7] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); *see* Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Commission's Request for Additional Information,'' *available at http://www.sec.gov/rules/sro/dtc-an.shtml.*

[8] Securities Exchange Act Release No. 83743 (July 31, 2018), 83 FR 38344 (August 6, 2018) (SR–DTC–2017–803). DTC submitted a courtesy copy of Amendment No. 1 to the advance notice through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the advance notice has been publicly available on the Commission's website at *http://www.sec.gov/rules/sro/dtc-an.shtml* since June 29, 2018.

[9] 12 U.S.C. 5465(e)(1)(E) and (G); *see* 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 http://www.sec.gov/rules/sro/dtc-an.shtml.*

[10] Capitalized terms used herein and not otherwise defined herein are defined in the Rules.

experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the ''Recovery Plan'') or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the ''Wind-down Plan'').

The R&W Plan would identify (i) the recovery tools available to DTC to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more of its Participants, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for implementation of such tools. The R&W Plan would also establish the strategy and framework for the orderly wind-down of DTC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return DTC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of DTC and its parent, The Depository Trust & Clearing Corporation (''DTCC''); [11] (ii) an analysis of DTC's intercompany arrangements and critical links to other financial market infrastructure (''FMI''); (iii) a description of DTC's services, and the criteria used to determine which services are considered critical; (iv) a description of the DTC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to DTC to mitigate credit/market [12] risks and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a Crisis Continuum timeline; (vii) a discussion of potential non-default losses and the resources available to DTC to address such losses, including recovery triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools' characteristics, including how they are designed to be comprehensive, effective, and transparent, how the tools provide incentives to Participants to, among other things, control and monitor the risks they may present to DTC, and how DTC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of DTC's business, including an estimate of the time and costs to effect a recovery or orderly wind-down of DTC.

Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules); therefore, descriptions of those tools in the R&W Plan would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in contractual arrangements to which DTC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that DTC may develop further supporting internal guidelines and materials that may provide operational support for matters described in the R&W Plan, and that such documents would be supplemental and subordinate to the R&W Plan.

DTC states that many of the tools available to DTC that would be described in the R&W Plan are DTC's existing, business-as-usual risk management and default management tools, which would continue to be applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe DTC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity (''LNA'') to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements (''Capital Policy''),[13] (ii) maintaining the Clearing Agency Capital Replenishment Plan (''Replenishment Plan'') as a viable plan for the replenishment of capital should DTC's equity fall close to or below the amount being held pursuant to the Capital Policy,[14] and (iii) the process for the allocation of losses among Participants as provided in Rule 4 (Participants Fund and Participants Investment).[15] The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning (''R&R Team'') of DTCC.[16] The R&R Team reports to the DTCC Management Committee (''Management Committee'') and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and would also review and approve any changes that are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of a DTC wind-down, and would provide for DTC's authority to take certain actions on the occurrence of a Market Disruption Event, as defined therein. DTC states that the Proposed Rules are designed to provide Participants with transparency and certainty with respect to these matters. DTC also states that the Proposed Rules are designed to facilitate the implementation of the R&W Plan, particularly DTC's strategy for winding down and transferring its business, and are designed to provide DTC with the legal basis to implement those aspects of the R&W Plan.

1. Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document's purpose and its regulatory background, and would outline a summary of the R&W Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and DTC management in the event DTC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern.

The R&W Plan would describe DTCC's business profile, provide a summary of DTC's services, and identify the intercompany arrangements and critical links between DTC and other

[11] DTCC is a user-owned and user-governed holding company and is the parent company of DTC and its affiliates, National Securities Clearing Corporation (''NSCC'') and Fixed Income Clearing Corporation (''FICC,'' and, together with NSCC and DTC, the ''Clearing Agencies''). The R&W Plan would describe how corporate support services are provided to DTC from DTCC and DTCC's other subsidiaries through intercompany agreements under a shared services model.

[12] DTC states that it uses the term ''credit/market'' risks in the R&W Plan because, for DTC, credit risk and market risk are closely related. *See infra* note 23.

[13] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–FICC–2017–007, SR–NSCC–2017–004).

[14] *See id.*

[15] *See supra* note 10.

[16] DTCC operates on a shared services model with respect to DTC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including DTC.

FMIs. DTC states that the overview section would provide a context for the R&W Plan by describing DTC's business, organizational structure and critical links to other entities. DTC also states that by providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later sections of the Recovery Plan, and the analysis of the factors that would be addressed in implementing the Wind-down Plan.

The R&W Plan would provide a description of established links between DTC and other FMIs, both domestic and foreign, including central securities depositories (''CSDs'') and central counterparties (''CCPs''), as well as the twelve U.S. Federal Reserve Banks. DTC states that this section of the R&W Plan, which identifies and briefly describes DTC's established links, is designed to provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The R&W Plan would define the criteria for classifying certain of DTC's services as ''critical,'' and would identify those critical services and the rationale for their classification. This section of the R&W Plan would provide an analysis of the potential systemic impact from a service disruption, which DTC states is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of DTC's critical services to the markets it serves. The criteria that would be used to identify a DTC service or function as critical would include (1) whether there is a lack of alternative providers or products; (2) whether failure of the service could impact DTC's ability to perform its book-entry and settlement services; (3) whether failure of the service could impact DTC's ability to perform its payment system functions; and (4) whether the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks and broker-dealers. The R&W Plan would then list each of those services, functions or activities that DTC has identified as ''critical'' based on the applicability of these four criteria. The R&W Plan would also include a non-exhaustive list of DTC services that are not deemed critical.

DTC states that the evaluation of which services provided by DTC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. While DTC's Wind-down Plan would provide for the transfer of all critical services to a transferee in the event DTC's wind-down is implemented, it would anticipate that any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership, would also be transferred.

The R&W Plan would describe the governance structure of both DTCC and DTC. This section of the R&W Plan would identify the ownership and governance model of these entities at both the Board and management levels. The R&W Plan would state that the stages of escalation required to manage recovery under the Recovery Plan or to invoke DTC's wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through DTC's governance structure. The R&W Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The R&W Plan would identify the Risk Committee of the Board (''Board Risk Committee'') as being responsible for oversight of risk management activities at DTC, which include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by DTC as well as oversight of DTC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[17] The R&W Plan would identify the DTCC Management Risk Committee (''Management Risk Committee'') as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The R&W Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office (''GCRO''), which works with staff within the DTCC Financial Risk Management group. Finally, the R&W Plan would describe the role of the Management Committee, which provides overall direction for all aspects of DTC's business, technology, and operations and the functional areas that support these activities.

The R&W Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the R&W Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Participant, which would be reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer (''CFO'') and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.[18] More generally, the R&W Plan would state that the type of loss and the nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. Both the Recovery Plan and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the R&W Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

2. DTC Recovery Plan

DTC states that the Recovery Plan is intended to be a roadmap of those actions that DTC may employ to monitor and, as needed, stabilize its financial condition. DTC also states that as each event that could lead to a financial loss could be unique in its circumstances, DTC proposes that the Recovery Plan would not be prescriptive and would permit DTC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based. DTC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that DTC would employ across evolving stress scenarios that it may face as it transitions through a Crisis Continuum, described below; (2) a description of

[17] The DTCC, DTC, NSCC, FICC Risk Committee Charter is *available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.*

[18] The R&W Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event. Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process.

DTC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to DTC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either losses arising out of a Participant Default (as defined below) or non-default losses. In all cases, DTC states that it would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation to best protect DTC, its Participants and the markets in which it operates.

(i) Managing Participant Default Losses and Liquidity Needs Through the Crisis Continuum

The Recovery Plan would describe the risk management surveillance, tools, and governance that DTC may employ across an increasing stress environment, which is referred to as the Crisis Continuum. This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stress market phase, (3) a phase commencing with DTC's decision to cease to act for a Participant or Affiliated Family of Participants [19] (referred to in the R&W Plan as the ''Participant Default phase''), and (4) a recovery phase. In the R&W Plan, the term ''cease to act'' and the actions that may lead to such decision are used within the context of the Rules.[20] The R&W Plan would, for purposes of the R&W Plan, use the term ''Participant Default Losses'' to refer to losses that arise out of or relate to the Participant Default and resulting cease to act (including any losses that arise from liquidation of the Participant's Collateral).

DTC states that the Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing DTC's ongoing management of credit, market, and liquidity risk, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. DTC also states that the Recovery Plan would discuss the management of credit/market risk and liquidity exposures together because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. DTC states that it manages these risk exposures collectively to limit their overall impact on DTC and its Participants. DTC states that it has built-in mechanisms to limit exposures and replenish financial resources used in a stress event, in order to continue to operate in a safe and sound manner. DTC states that it is a closed, collateralized system in which liquidity resources are matched against risk management controls, so, at any time, the potential net settlement obligation of the Participant or Affiliated Family of Participants with the largest net settlement obligation cannot exceed the amount of liquidity resources.[21] DTC states that while Collateral securities are subject to market price risk, DTC manages its liquidity and market risks through the calculation of the required deposits to the Participants Fund [22] and risk management controls, *i.e.,* collateral haircuts, the Collateral Monitor [23] and Net Debit Cap.[24]

The Recovery Plan would outline the metrics and indicators that DTC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. DTC states that the Recovery Plan is designed to make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that DTC would retain the flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Participant Default event, in accordance with the Rules. Therefore, DTC states that the Recovery Plan would both provide DTC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that DTC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of DTC during a period of stress.

The stable market phase of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include performing (1) backtests to evaluate the adequacy of the collateral level and the haircut sufficiency for covering market price volatility and (2) stress testing to cover market price moves under real historical and hypothetical scenarios to assess the haircut adequacy under extreme but plausible market conditions. The backtesting and stress testing results are escalated, as necessary, to internal and Board committees.[25]

The Recovery Plan would describe some of the indicators of the stress market phase of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Participant Default would be imminent. Within the description of this phase, the Recovery Plan would provide that DTC may take targeted, routine risk

[19] The R&W Plan would define an ''Affiliated Family'' of Participants as a number of affiliated entities that are all Participants of DTC.

[20] *See* Rule 4 (Participants Fund and Participants Investment), Rule 9(A) (Transactions in Securities and Money Payments), Rule 9(B) (Transactions in Eligible Securities), Rule 9(C) (Transactions in MMI Securities), Rule 10 (Discretionary Termination), Rule 11 (Mandatory Termination) and Rule 12 (Insolvency), *supra* note 10. Further, the term ''Participant Default'' would also be used in the R&W Plan as such term is defined in Rule 4 (Participants Fund and Participants Investment), *see supra* note 10.

[21] DTC's liquidity risk management strategy, including the manner in which DTC would deploy liquidity tools as well as its intraday use of liquidity, is described in the Clearing Agency Liquidity Risk Management Framework. *See* Securities Exchange Act Release No. 82377 (December 21, 2017), 82 FR 61617 (December 28, 2017) (SR–DTC–2017–004, SR–FICC–2017–008, SR–NSCC–2017–005).

[22] *See* Rule 4 (Participants Fund and Participants Investment), *supra* note 10.

[23] *See* Rule 1 (Definitions; Governing Law), Section 1, *supra note* 10. DTC states that credit risk and market risk are closely related for DTC, because DTC monitors credit exposures from Participants through these risk management controls, which limit Participant settlement obligations to the amount of available liquidity resources and require those obligations to be fully collateralized. The pledge or liquidation of collateral in an amount sufficient to restore liquidity resources depends on market values and demand, *i.e.,* market risk exposure. DTC states that such risk management controls are part of DTC's market risk management strategy and are designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' *See* 17 CFR 240.17Ad–22(e)(4).

[24] *Id.*

[25] DTC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). *See* Securities Exchange Act Release No. 82638 (December 19, 2017), 82 FR 61082 (December 26, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006).

management measures as necessary and as permitted by the Rules.

Within the Participant Default phase of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that DTC would follow in the event of a Participant Default and any decision by DTC to cease to act for that Participant.[26] The Recovery Plan would provide that the objectives of DTC's actions upon a Participant Default are to (1) minimize losses and market exposure, and (2), to the extent practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. Management of liquidity risk through this phase would involve ongoing monitoring of, among other things, the adequacy of the Participants Fund and risk controls, and the Recovery Plan would identify certain actions DTC may deploy as it deems necessary to mitigate a potential liquidity shortfall. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

The Recovery Plan would also identify financial resources available to DTC, pursuant to the Rules, to address losses arising out of a Participant Default. Specifically, Rule 4 (Participants Fund and Participants Investment) provides that losses remaining after application of the Defaulting Participant's resources be satisfied first by applying a Corporate Contribution, and then, if necessary, by allocating remaining losses among the membership in accordance with Rule 4 (Participants Fund and Participants Investment).[27]

In order to provide for an effective and timely recovery, the Recovery Plan would describe the period of time that would occur near the end of the Participant Default phase, during which DTC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase (referred to in the R&W Plan as the Recovery Corridor). The Recovery Plan would then describe the recovery phase of the Crisis Continuum, which would begin on the date that DTC issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period.[28] The recovery phase would describe actions that DTC may take to avoid entering into a wind-down of its business.

DTC states that it expects that significant deterioration of liquidity resources would cause it to enter the Recovery Corridor. Therefore, the R&W Plan would describe the actions DTC may take aimed at replenishing those resources. Throughout the Recovery Corridor, DTC would monitor the adequacy of its resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain corridor indicator metrics.

DTC states that the majority of the corridor indicators, as identified in the Recovery Plan, relate directly to conditions that may require DTC to adjust its strategy for hedging and liquidating Collateral securities, and any such changes would include an assessment of the status of the corridor indicators. For each corridor indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) Corridor Actions, which are steps that may be taken to improve the status of the indicator,[29] as well as management escalations required to authorize those steps. DTC states that because DTC has never experienced the default of multiple Participants, it has not, historically, measured the deterioration or improvements metrics of the corridor indicators. Therefore, DTC states that these metrics were chosen based on the business judgment of DTC management.

The Recovery Plan would also describe the reporting and escalation of the status of the corridor indicators throughout the Recovery Corridor. Significant deterioration of a corridor indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. DTC management would review the corridor indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Participant Defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that DTC may remain in the Recovery Corridor stage between one day and two weeks. DTC states that this estimate is based on historical data observed in past Participant Default events, the results of simulations of Participant Defaults, and periodic liquidity analyses conducted by DTC. DTC states that the actual length of a Recovery Corridor would vary based on actual market conditions observed at the time, and DTC would expect the Recovery Corridor to be shorter in market conditions of increased stress.

The Recovery Plan would outline steps by which DTC may allocate its losses, which would occur when and in the order provided in Rule 4 (Participants Fund and Participants Investment).[30] The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of DTC's liquidity resources following a Participant Default, and would provide that these tools may be used as appropriate during the Crisis Continuum to address liquidity shortfalls if they arise. DTC states that the goal in managing DTC's liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders in a timely manner. DTC states that the Recovery Plan would state that the availability and capacity of these liquidity tools cannot be accurately predicted and are dependent on the circumstances of the applicable stress

[26] *See* Rule 10 (Discretionary Termination); Rule 11 (Mandatory Termination); Rule 12 (Insolvency), *supra* note 10.

[27] *See supra* note 10. Rule 4 (Participants Fund and Participants Investment) defines the amount DTC would contribute to address a loss resulting from either a Participant Default or a non-default event as the Corporate Contribution. This amount is 50 percent of the General Business Risk Capital Requirement, which is calculated pursuant to the Capital Policy and, which DTC states is an amount sufficient to cover potential general business losses so that DTC can continue operations and services as a going concern if those losses materialize, in an effort to comply with Rule 17Ad–22(e)(15) under the Act. *See supra* note 13 (concerning the Capital Policy); 17 CFR 240.17Ad–22(e)(15).

[28] As provided for in Rule 4 (Participants Fund and Participants Investment), the ''Event Period'' is ten Business Days beginning on (i) with respect to a Participant Default, the day on which DTC notifies Participants that it has ceased to act for a Participant, or (ii) with respect to a non-default loss, the day that DTC notifies Participants of the determination by the Board that there is a non-default loss event. Rule 4 (Participants Fund and Participants Investment) defines a ''round'' as a series of loss allocations relating to an Event Period, and provides that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the Loss Allocation Caps of those Participants included in the round. *See* Rule 4 (Participants Fund and Participants Investment), *supra* note 10.

[29] The Corridor Actions that would be identified in the R&W Plan are designed to be indicative, but not prescriptive; therefore, if DTC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the R&W Plan for the Corridor Indicator to which the action relates.

[30] *See supra* note 10.

period, including market price volatility, actual or perceived disruptions in financial markets, the costs to DTC of utilizing these tools, and any potential impact on DTC's credit rating.

The Recovery Plan would state that DTC will have entered the recovery phase on the date that it issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, DTC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered.

The Recovery Plan would describe governance for the actions and tools that may be employed within each phase of the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the various indicators and metrics applicable to that phase of the Crisis Continuum, and would follow relevant escalation protocol that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Participant, pursuant to the Rules, and around the management and oversight of the subsequent liquidation of Collateral securities. The Recovery Plan would state that, overall, DTC would retain flexibility in accordance with the Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best protect DTC and its Participants, and to meet the primary objectives, throughout the Crisis Continuum, of minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

(ii) Non-Default Losses

The Recovery Plan would outline how DTC may address losses that result from events other than a Participant Default. While these matters are addressed in greater detail in other documents, this section of the R&W Plan would provide a roadmap to those documents and an outline for DTC's approach to monitoring and managing losses that could result from a non-default event. The R&W Plan would first identify some of the risks DTC faces that could lead to these losses, which include, for example, (1) the business and profit/loss risks of unexpected declines in revenue or growth of expenses; (2) the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and (3) custody or investment risks that could lead to financial losses. The Recovery Plan would describe DTC's overall strategy for the management of these risks, which includes a ''three lines of defense'' approach to risk management that allows for comprehensive management of risk across the organization.[31] The Recovery Plan would also describe DTC's approach to financial risk and capital management. The R&W Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow DTC to effectively identify, monitor, and manage risks of non-default losses.

The R&W Plan would identify the two categories of financial resources DTC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,[32] (b) the Corporate Contribution,[33] and (c) other amounts held in excess of DTC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of Rule 4 (Participants Fund and Participants Investment).[34]

The R&W Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.[35] Finally the R&W Plan would discuss how DTC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the loss or liability is expected to exceed DTC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a Declared Non-Default Loss Event pursuant to Rule 4 (Participants Fund and Participants Investment).[36]

The R&W Plan would also describe proposed Rule 38 (Market Disruption and Force Majeure), which DTC is proposing to adopt in the Rules. DTC states that this Proposed Rule is designed to provide transparency around how DTC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a Market Disruption Event and the governance around a determination that such an event has occurred. The Proposed Rule would also describe DTC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable.

The R&W Plan would describe the interaction between the Proposed Rule and DTC's existing processes and procedures addressing business continuity management and disaster recovery (generally, the ''BCM/DR procedures''). DTC states that the intent is to make clear that the Proposed Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to DTC and not necessarily addressed by the BCM/DR procedures. Finally, the R&W Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a time limit on its application. However, the R&W Plan

[31] DTC states that the ''three lines of defense'' approach to risk management includes (1) a first line of defense comprised of the various business lines and functional units that support the products and services offered by DTC; (2) a second line of defense comprised of control functions that support DTC, including the risk management, legal and compliance areas; and (3) a third line of defense, which is performed by an internal audit group. The Clearing Agency Risk Management Framework includes a description of this ''three lines of defense'' approach to risk management, and addresses how DTC comprehensively manages various risks, including operational, general business, investment, custody, and other risks that arise in or are borne by it. Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR–DTC–2017–013, SR–FICC–2017–016, SR–NSCC–2017–012). The Clearing Agency Operational Risk Management Framework describes the manner in which DTC manages operational risks, as defined therein. Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR–DTC–2017–014, SR–FICC–2017–017, SR–NSCC–2017–013).

[32] *See supra* note 27.

[33] *See supra* note 27.

[34] *See supra* note 10.

[35] *See supra* note 13 (concerning the Capital Policy).

[36] *See supra* note 10.

would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. DTC states that, overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

(iii) Recovery Tool Characteristics

The Recovery Plan would describe DTC's evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide incentives to Participants and minimize negative impact on Participants and the financial system.

3. DTC Wind-Down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of DTC if the use of the recovery tools described in the Recovery Plan do not successfully return DTC to financial viability. DTC states that, while DTC believes that such event is extremely unlikely, given the comprehensive nature of the recovery tools, DTC is proposing a wind-down strategy that provides for (1) the transfer of DTC's business, assets, securities inventory, and membership to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Bankruptcy Code,[37] and (3) after effectuating this transfer, DTC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. DTC states that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that DTC's critical services will be available to the market as long as there are Participants in good standing, and (2) minimizing disruption to the operations of Participants and financial markets generally that might be caused by DTC's failure.

In describing the transfer approach to DTC's Wind-down Plan, the R&W Plan would identify the factors that DTC considered in developing this approach, including the fact that DTC does not own material assets that are unrelated to its clearance and settlement activities. Therefore, a business reorganization or ''bail-in'' of debt approach would be unlikely to mitigate significant losses. Additionally, DTC states that its approach was developed in consideration of its critical and unique position in the U.S. markets, which precludes any approach that would cause DTC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of DTC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down DTC as the Runway Period. DTC states that this period would follow the implementation of any recovery tools, as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for DTC to realize a loss sufficient to cause it to be unable to borrow to complete settlement and to repay such borrowings.[38] The Wind-down Plan would identify some of the indicators that DTC has entered the Runway Period.

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning DTC to viability as a going concern. As described in the R&W Plan, DTC states that this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of DTC and Participants to avoid actions that might undermine DTC's recovery efforts. Additionally, DTC states that this approach takes into account the characteristics of DTC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of DTC's recovery tools.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of DTC's critical services, business, assets, securities inventory, and membership [39] to another legal entity that is legally, financially, and operationally able to provide DTC's critical services to entities that wish to continue their membership following the transfer (''Transferee''). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently (''Third Party Transferee''); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC (''Failover Transferee'') to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire DTC's business. DTC would seek to identify the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Bankruptcy Code.[40] The Wind-down Plan would anticipate that the transfer to the Transferee, including the transfer and establishment of the Participant and Pledgee securities accounts on the books of the Transferee, be effected in connection with proceedings under Chapter 11 of the U.S. Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, with the intent that the transfer be free and clear of claims against, and interests in, DTC, except to the extent expressly provided in the court's order.[41]

DTC states that in order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, DTC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership. Given the transfer of the securities inventory and the establishment on the books of the Transferee Participant and Pledgee securities accounts, DTC anticipates that, following the transfer, it would not itself continue to provide any services, critical or not. Following the transfer, the Wind-down Plan would anticipate that the Transferee and its continuing membership would determine whether to continue to provide any transferred non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. DTC's Wind-down Plan would anticipate that the Transferee would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to DTC, including staffing, infrastructure and operational support.

[37] 11 U.S.C. 101 *et seq.*

[38] The Wind-down Plan would state that, given DTC's position as a user-governed financial market utility, it is possible that its Participants might voluntarily elect to provide additional support during the recovery phase leading up to a potential trigger of the Wind-down Plan, but would also be designed to make clear that DTC cannot predict the willingness of Participants to do so.

[39] Arrangements with FAST Agents and DRS Agents (each as defined in proposed Rule 32(A)) and with Settling Banks would also be assigned to the Transferee, so that the approach would be transparent to issuers and their transfer agents, as well as to Settling Banks.

[40] 11 U.S.C. 101 *et seq.*

[41] *See* 11 U.S.C. 363.

The Wind-down Plan would also anticipate the assignment of DTC's ''inbound'' link arrangements to the Transferee. The Wind-down Plan would provide that in the case of ''outbound'' links, DTC would seek to have the linked FMIs agree, at a minimum, to accept the Transferee as a link party for a transition period.[42]

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of DTC would involve addressing any residual claims against DTC through the bankruptcy process and liquidating the legal entity. The Wind-down Plan does not contemplate DTC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated.

The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of DTC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of DTC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) DTC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether DTC could safely stabilize the business and protect its value without seeking bankruptcy protection, and DTC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions DTC or DTCC may take to prepare for wind-down in the period before DTC experiences any financial distress, (2) actions DTC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions DTC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the R&W Plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to achieve a recovery or orderly wind-down of DTC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by DTC's average monthly operating expenses, including adjustments to account for changes to DTC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of DTC's critical operations. The estimated wind-down costs would constitute the Recovery/Wind-down Capital Requirement under the Capital Policy.[43] Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.[44]

DTC states that the R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed Rule 32(A) (Wind-down of the Corporation), which would be adopted to facilitate the implementation of the Wind-down Plan, as discussed below.

B. Proposed Rules

In connection with the adoption of the R&W Plan, DTC proposes to adopt the Proposed Rules, each of which is described below. DTC states that the Proposed Rules are designed to facilitate the execution of the R&W Plan and are designed to provide Participants with transparency as to critical aspects of the R&W Plan, particularly as they relate to the rights and responsibilities of both DTC and its Participants. DTC also states that the Proposed Rules are designed to provide a legal basis to these aspects of the R&W Plan.

1. Rule 32(A) (Wind-Down of the Corporation

DTC states that the proposed Rule 32(A) (''Wind-down Rule'') is designed to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. DTC states that the Wind-down Rule is designed to make clear that a wind-down of DTC's business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of DTC's services to a Transferee, as described therein. DTC states that, generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Participants and Pledgees, Settling Banks, DRS Agents, and FAST Agents (as these terms would be defined in the Wind-down Rule), and DTC's inventory of financial assets in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

(i) Wind-Down Trigger

First, DTC states that the Proposed Rule is designed to make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan and in the proposed Wind-down Rule, the Board would initiate the Wind-down Plan if, in the exercise of its business judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore DTC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of DTC's business, is in the best interests of DTC, its Participants and Pledgees, its shareholders and creditors, and the U.S. financial markets.

[42] The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by DTC. However, to the extent the Transferee adopts rules substantially identical to those DTC has in effect prior to the transfer, DTC states that it would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that no Participants Fund would be transferred to the Transferee, as it is not held in a bankruptcy remote manner and it is the primary prefunded liquidity resource to be accessed in the recovery phase.

[43] *See supra* note 13.

[44] *See supra* note 13.

(ii) Identification of Critical Services; Designation of Dates and Times for Specific Actions

The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of DTC's business to a Transferee (''Transfer Time''), and (2) the last day that instructions in respect of securities and other financial products may be effectuated through the facilities of DTC (the ''Last Activity Date''). DTC states that the Proposed Rule is designed to make clear that DTC would not accept any transactions for settlement after the Last Activity Date. Any transactions to be settled after the Transfer Time would be required to be submitted to the Transferee, and would not be DTC's responsibility.

(iii) Notice Provisions

The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, DTC would provide its Participants, Pledgees, DRS Agents, FAST Agents, Settling Banks and regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of DTC's Participants and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of DTC's business would be effected; (3) the Transfer Time and Last Activity Date; and (4) identification of Participants and the critical and non-critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Participants (as defined below and in the Proposed Rule) and any non-critical services that would not be included in the transfer. DTC would also make available the rules and procedures and membership agreements of the Transferee.

(iv) Transfer of Membership

The proposed Wind-down Rule would address the expected transfer of DTC's membership to the Transferee, which DTC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Thus, under the proposal, in connection with the implementation of the Wind-down Plan and with no further action required by any party:

(1) Each Eligible Participant would become (i) a Participant of the Transferee and (ii) a party to a Participants agreement with the Transferee;

(2) each Participant that is delinquent in the performance of any obligation to DTC or that has provided notice of its election to withdraw as a Participant (a ''Non-Eligible Participant'') as of the Transfer Time would become (i) the holder of a transition period securities account maintained by the Transferee on its books (''Transition Period Securities Account'') and (ii) a party to a Transition Period Securities Account agreement of the Transferee;

(3) each Pledgee would become (i) a Pledgee of the Transferee and (ii) a party to a Pledgee agreement with the Transferee;

(4) each DRS Agent would become (i) a DRS Agent of the Transferee and (ii) a party to a DRS Agent agreement with the Transferee;

(5) each FAST Agent would become (i) a FAST Agent of the Transferee and (ii) a party to a FAST Agent agreement with the Transferee; and

(6) each Settling Bank for Participants and Pledgees would become (i) a Settling Bank for Participants and Pledgees of the Transferee and (ii) a party to a Settling Bank Agreement with the Transferee.

Further, DTC states that the Proposed Rule is designed to make clear that it would not prohibit (1) Non-Eligible Participants from applying for membership with the Transferee, (2) Non-Eligible Participants that have become holders of Transition Period Securities Accounts (''Transition Period Securities Account Holders'') of the Transferee from withdrawing as a Transition Period Securities Account Holder from the Transferee, subject to the rules and procedures of the Transferee, and (3) Participants, Pledgees, DRS Agents, FAST Agents, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee, subject to the rules and procedures of the Transferee. Under the Proposed Rule, Non-Eligible Participants that have become Transition Period Securities Account Holders of the Transferee shall have the rights and be subject to the obligations of Transition Period Securities Account Holders set forth in special provisions of the rules and procedures of the Transferee applicable to such Transition Period Securities Account Holder. Specifically, Non-Eligible Participants that become Transition Period Securities Account Holders must, within the Transition Period (as defined in the Proposed Rule), instruct the Transferee to transfer the financial assets credited to its Transition Period Securities Account (i) to a Participant of the Transferee through the facilities of the Transferee or (ii) to a recipient outside the facilities of the Transferee, and no additional financial assets may be delivered versus payment to a Transition Period Securities Account during the Transition Period.

(v) Transfer of Inventory of Financial Assets

The proposed Wind-down Rule would provide that DTC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, at Transfer Time:

(1) DTC would transfer to the Transferee (i) its rights with respect to its nominee Cede & Co. (''Cede'') (and thereby its rights with respect to the financial assets owned of record by Cede), (ii) the financial assets held by it at the FRBNY, (iii) the financial assets held by it at other CSDs, (iv) the financial assets held in custody for it with FAST Agents, (v) the financial assets held in custody for it with other custodians and (vi) the financial assets it holds in physical custody.

(2) The Transferee would establish security entitlements on its books for Eligible Participants of DTC that become Participants of the Transferee that replicate the security entitlements that DTC maintained on its books immediately prior to the Transfer Time for such Eligible Participants, and DTC would simultaneously eliminate such security entitlements from its books.

(3) The Transferee would establish security entitlements on its books for Non-Eligible Participants of DTC that become Transition Period Securities Account Holders of the Transferee that replicate the security entitlements that DTC maintained on its books immediately prior to the Transfer Time for such Non-Eligible Participants, and

DTC would simultaneously eliminate such security entitlements from its books.

(4) The Transferee would establish pledges on its books in favor of Pledgees that become Pledgees of the Transferee that replicate the pledges that DTC maintained on its books immediately prior to the Transfer Time in favor of such Pledgees, and DTC shall simultaneously eliminate such pledges from its books.

(vi) Comparability Period

DTC states that the proposed automatic mechanism for the transfer of DTC's membership is intended to provide DTC's membership with continuous access to critical services in the event of DTC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. The proposed Wind-down Rule would provide that DTC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from DTC to the Transferee, for at least a period of time to be agreed upon (''Comparability Period''), the business transferred from DTC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by DTC. Specifically, the proposed Wind-down Rule would provide that: (1) The rules of the Transferee and terms of Participant, Pledgee, DRS Agent, FAST Agent and Settling Bank agreements would be comparable in substance and effect to the analogous Rules and agreements of DTC, (2) the rights and obligations of any Participants, Pledgees, DRS Agents, FAST Agents, and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to DTC, and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which such services were provided by DTC.

DTC states that the purpose of these provisions and the intended effect of the proposed Wind-down Rule is to facilitate a smooth transition of DTC's business to a Transferee and to provide that, for at least the Comparability Period, the Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by DTC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new Participants, Pledgees, DRS Agents, FAST Agents, and Settling Banks of the Transferee.

(vii) Subordination of Claims Provisions and Miscellaneous Matters

The proposed Wind-down Rule would include a provision addressing the subordination of unsecured claims against DTC of its Participants who fail to participate in DTC's recovery efforts (*i.e.,* firms delinquent in their obligations to DTC or elect to retire from DTC in order to minimize their obligations with respect to the allocation of losses, pursuant to the Rules). DTC states that this provision is designed to incentivize Participants to participate in DTC's recovery efforts.[45]

The proposed Wind-down Rule would address other ex-ante matters, including provisions providing that its Participants, Pledgees, DRS Agents, FAST Agents and Settling Banks (1) will assist and cooperate with DTC to effectuate the transfer of DTC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant DTC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by DTC pursuant to the Proposed Rule.

DTC states that the purpose of the limitation of liability is to facilitate and protect DTC's ability to act expeditiously in response to extraordinary events. Such limitation of liability would be available only following triggering of the Wind-down Plan. In addition, and as a separate matter, DTC states that the limitation of liability provides Participants with transparency for the unlikely situation when those extraordinary events could occur, as well as supporting the legal framework within which DTC would take such actions. DTC states that these provisions, collectively, are designed to enable DTC to take such acts as the Board determines necessary to effectuate an orderly transfer and wind-down of its business should recovery efforts prove unsuccessful.

[45] Nothing in the proposed Wind-down Rule would seek to prevent a Participant that retired its membership at DTC from applying for membership with the Transferee. Once its DTC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

2. Rule 38 (Market Disruption and Force Majeure)

The proposed Rule 38 (''Force Majeure Rule'') would address DTC's authority to take certain actions upon the occurrence, and during the pendency, of a Market Disruption Event, as defined therein. DTC states that the Proposed Rule is designed to clarify DTC's ability to take actions to address extraordinary events outside of the control of DTC and of its membership, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, DTC would be entitled, during the pendency of a Market Disruption Event, to (1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require its Participants and Pledgees to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of DTC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a Market Disruption Event. The proposed Force Majeure Rule would define the governance procedures for how DTC would determine whether, and how, to implement the provisions of the rule. A determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to the Commission, and advance consultation with Commission staff, when practicable, including notification when an event is no longer continuing and the relevant actions are terminated. The Proposed Rule would require Participants and Pledgees to notify DTC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require DTC to notify its Participants and Pledgees if it has triggered the Proposed Rule and of actions taken or intended to be taken thereunder.

Finally, the Proposed Rule would address other related matters, including

a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event. DTC states that the purpose of the limitation of liability would be similar to the purpose of the analogous provision in the proposed Wind-down Rule, which is to facilitate and protect DTC's ability to act expeditiously in response to extraordinary events.

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose 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 and strengthening the liquidity of systemically important financial market utilities.[46]

Section 805(a)(2) of the Clearing Supervision Act[47] authorizes the Commission to prescribe 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. Section 805(b) of the Clearing Supervision Act[48] provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[49] and Section 17A of the Act[50] (''Rule 17Ad–22'').[51] Rule 17Ad–22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[52] Therefore, it is appropriate for the Commission to review proposed changes in advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act[53] and against Rule 17Ad–22.[54]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposed changes in the Advance Notice are designed to help DTC promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. As described above, the R&W Plan, generally, would help DTC promote robust risk management and reduce systemic risks by providing DTC with a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Specifically, the Recovery Plan would provide a roadmap that would identify a number of triggers for the potential application of a number of available recovery tools. Identifying triggers for the potential application of recovery tools would help promote robust risk management and reduce systemic risks by better enabling DTC to more promptly determine when and how it may need to manage a significant stress event, and, as needed, stabilize its financial condition.

Similarly, the Force Majeure Rule is designed to provide a roadmap to address extraordinary events that may occur outside of DTC's control. Specifically, the Force Majeure Rule would define a Market Disruption Event and provide governance around determining when such an event has occurred. The Force Majeure Rule also would describe DTC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of DTC's services, if practicable. By defining a Market Disruption Event and providing such governance and authority, the Commission believes that the Force Majeure Rule also would help promote robust risk management and reduce systemic risks by improving DTC's ability to identify and manage a force majeure event, and, as needed, to stabilize its financial condition so that DTC can continue to operate and act as a source of stability for the financial markets it serves.

The Commission believes that the Recovery Plan and the Force Majeure Rule reflect an approach designed to allow for a more considered and comprehensive evaluation by DTC of a stressed market situation and the ways in which DTC could apply available recovery tools in a manner intended to minimize the potential negative effects of the stress situation for DTC, its membership, and the broader financial system. Therefore, the Commission believes that the Recovery Plan and the Force Majeure Rule would help promote robust risk management at DTC and, thus, reduce systemic risks by establishing a means for DTC to best determine the most appropriate way to address such stress situations in an effective manner.

The Commission believes that the R&W Plan, generally, would help DTC promote safety and soundness and support the stability of the broader financial system by providing a roadmap to wind-down that is designed to ensure the availability of DTC's critical services to the marketplace, while reducing disruption to the operations of Participants and financial markets that might be caused by DTC's failure. Specifically, as described above, the Wind-down Plan, as facilitated by the Wind-down Rule, would provide for the wind-down of DTC's business and transfer of membership and critical services if the recovery tools do not successfully return DTC to financial viability. Accordingly, critical services, such as services that lack alternative providers or products as well as services that are interconnected with other participants and processes within the U.S. financial system would be able to continue in an orderly manner while DTC is seeking to wind-down its services. By designing the Wind-down Plan and the Wind-down Rule to enable the continuity of DTC's critical services and membership in an orderly manner while DTC is seeking to wind-down its services, the Commission believes these proposed changes would help DTC promote safety and soundness and support stability in the broader financial system in the event the Wind-down Plan is implemented.

By better enabling DTC to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, as described above, the Commission believes that the proposed changes in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[55]

[46] *See* 12 U.S.C. 5461(b).
[47] 12 U.S.C. 5464(a)(2).
[48] 12 U.S.C. 5464(b).
[49] 12 U.S.C. 5464(a)(2).
[50] 15 U.S.C. 78q–1.
[51] *See* 17 CFR 240.17Ad–22.
[52] *Id.*
[53] 12 U.S.C. 5464(b).
[54] *See* 17 CFR 240.17Ad–22.
[55] 12 U.S.C. 5464(b).

B. Consistency With Rules 17Ad–22(e)(2)(i), (iii), and (v) Under the Act

Rule 17Ad–22(e)(2)(i) under the Act requires a covered clearing agency [56] to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[57] Rule 17Ad–22(e)(2)(iii) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that support the public interest requirements in Section 17A of the Act [58] applicable to clearing agencies, and the objectives of owners and participants.[59] Rule 17Ad–22(e)(2)(v) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.[60]

As described above, the R&W Plan is designed to identify clear lines of responsibility concerning the R&W Plan including (1) the ongoing development of the R&W Plan; (2) ongoing maintenance of the R&W Plan; (3) reviews and approval of the R&W Plan; and (4) the functioning and implementation of the R&W Plan. As described above, the R&R Team, which reports to the Management Committee, is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. Meanwhile, the Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and also would review and approve any changes that are proposed to the R&W Plan outside of the biennial review. Moreover, the R&W Plan would state the stages of escalation required to manage recovery under the Recovery Plan or to invoke DTC's wind–down under the Wind-down Plan, which would range from relevant business line managers up to the Board. The R&W Plan would identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The R&W Plan also would specify the process DTC would take to receive input from various parties at DTC, including management committees and the Board.

In considering the above, the Commission believes that the R&W Plan would help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent because it would specify lines of control. The Commission also believes that the R&W Plan would help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that support the public interest requirements in Section 17A of the Act [61] applicable to clearing agencies, and the objectives of owners and participants because the R&W Plan specifies the process DTC would take to receive input from various DTC stakeholders. In addition, the Commission believes that the R&W Plan would help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility because it specifies who is responsible for the ongoing development, maintenance, reviews, approval, functioning, and implementation of the R&W Plan.

Therefore, the Commission believes that the R&W Plan is consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v) under the Act.[62]

C. Consistency With Rule 17Ad–22(e)(3)(ii) Under the Act

Rule 17Ad–22(e)(3)(ii) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[63]

As described above, the R&W Plan's Recovery Plan provides a plan for DTC's recovery necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses by defining the risk management activities, stress conditions and indicators, and tools that DTC may use to address stress scenarios that could eventually prevent DTC from being able to provide its critical services as a going concern. More specifically, through the framework of the Crisis Continuum, which identifies tools that can be employed to mitigate losses and mitigate or minimize liquidity needs as the market environment becomes increasingly stressed, the Recovery Plan would identify measures that DTC may take to manage risks of credit losses and liquidity shortfalls, and other losses that could arise from a Participant Default. The Recovery Plan also would address DTC's management of general business risks and other non-default risks that could lead to losses by identifying potential non-default losses and the resources available to DTC to address such losses, including recovery triggers and tools to mitigate such losses. Therefore, the Commission believes that the R&W Plan's Recovery Plan helps DTC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by DTC, which includes a recovery plan necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

As described above, the R&W Plan's Wind-down Plan provides a plan for orderly wind-down of DTC, which would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning DTC to viability as a going concern. Once triggered, the Wind-down Plan sets forth mechanisms for the transfer of DTC's membership and business, and it is designed to maintain continued access to DTC's critical services and to minimize market impact of the transfer while DTC is seeking to ultimately wind-down its services. Specifically, the Wind-down Plan would provide for the transfer of

[56] A ''covered clearing agency'' means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1 *et seq.*) that is designated systemically important by the Financial Stability Oversight Counsel (''FSOC'') pursuant to the Clearing Supervision Act (12 U.S.C. 5461 *et seq.*). *See* 17 CFR 240.17Ad–22(a)(5)–(6). On July 18, 2012, FSOC designated DTC as systemically important. U.S. Department of the Treasury, ''FSOC Makes First Designations in Effort to Protect Against Future Financial Crises,'' *available at https://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx.* Therefore, DTC is a covered clearing agency.

[57] 17 CFR 240.17Ad–22(e)(2)(i).

[58] 15 U.S.C. 78q–1.

[59] 17 CFR 240.17Ad–22(e)(2)(iii).

[60] 17 CFR 240.17Ad–22(e)(2)(v).

[61] 15 U.S.C. 78q–1.

[62] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[63] 17 CFR 240.17Ad–22(e)(3)(ii).

DTC's business, assets, securities inventory, and membership to another legal entity with such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Bankruptcy Code.[64] After effectuating this transfer, DTC would liquidate any remaining assets in an orderly manner in bankruptcy proceedings.

Although the Commission is not opining on the Wind-down Plan's consistency with the U.S. Bankruptcy Code, in reviewing the proposed changes, the Commission believes that DTC's intent to use bankruptcy proceedings to achieve an orderly liquidation of assets after any transfer of DTC's business appears reasonable, in light of the provisions of the Bankruptcy Code that address the liquidation and distribution of a debtor's property among creditors and interest holders.[65] Under many circumstances, Section 363 of the Bankruptcy Code provides for the sale of property ''free and clear of any interest in such property of an entity other than the estate[.]'' [66] The Commission believes that DTC's analysis regarding the applicability of these provisions, while not free from doubt, presents a reasonable approach to liquidation in light of the circumstances and the available alternatives.[67] Therefore, the Commission believes that the R&W Plan's Wind-down Plan helps DTC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by DTC, which includes a wind-down plan necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

Therefore, the Commission believes that the R&W Plan is consistent with Rule 17Ad–22(e)(3)(ii) under the Act.[68]

D. Consistency With Rules 17Ad–22(e)(15)(i)–(ii) Under the Act

Rule 17Ad–22(e)(15)(i) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.[69] Rule 17Ad–22(e)(15)(ii) under the Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad–22(e)(3)(ii) under the Act,[70] discussed above.[71]

As discussed above, DTC's Capital Policy is designed to address how DTC holds LNA in compliance with these requirements,[72] while the Wind-down Plan would include an analysis to estimate the amount of time and cost to achieve a recovery or orderly wind-down of DTC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan also would provide that the estimate would be the Recovery/Wind-down Capital Requirement under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the amount of LNA that DTC plans to hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, the Commission believes that the R&W Plan is consistent with Rules 17Ad–22(e)(15)(i) and (ii) under the Act.[73]

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[74] that the Commission *does not object* to advance notice SR–DTC–2017–803, as modified by Amendment No. 1, and that DTC is *authorized* to implement the proposal as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–DTC–2017–021, as modified by Amendment No. 1, whichever is later.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

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[64] 11 U.S.C. 101 *et seq.*

[65] *See, e.g.,* 11 U.S.C. 363, 726, and 1129(a)(7).

[66] *See* 11 U.S.C. 363(f).

[67] The Wind-down Plan would identify certain factors the Board may consider in evaluating alternatives, which would include, for example, whether DTC could safely stabilize the business and protect its value without seeking bankruptcy protection, and DTC's ability to continue to meet its regulatory requirements.

[68] 17 CFR 240.17Ad–22(e)(3)(ii).

[69] 17 CFR 240.17Ad–22(e)(15)(i).

[70] 17 CFR 240.17Ad–22(e)(3)(ii).

[71] 17 CFR 240.17Ad–22(e)(15)(ii).

[72] *Supra* note 13.

[73] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[74] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83950; File No. SR–DTC–2017–804]

Self-Regulatory Organizations; The Depository Trust Company; Notice of No Objection to an Advance Notice, as Modified by Amendment No. 1, To Amend the Loss Allocation Rules and Make Other Changes

August 27, 2018.

On December 18, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–DTC–2017–804 pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act'') [2] to amend DTC's application of the Participants Fund, loss allocation rules, voluntary retirement process for Participants, the return of certain deposits to former Participants, and make other conforming and technical changes.[3] The

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On December 18, 2017, DTC filed the advance notice as proposed rule change SR–DTC–2017–022 with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change

Continued

advance notice was published for comment in the **Federal Register** on January 30, 2018.[4] In that publication, the Commission also extended the review period of the advance notice for an additional 60 days, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[5] On April 10, 2018, the Commission required additional information from DTC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,[6] which tolled the Commission's period of review of the advance notice until 60 days from the date the information required by the Commission was received by the Commission.[7] On June 28, 2018, DTC filed Amendment No. 1 to the advance notice to amend and replace in its entirety the advance notice as originally filed on December 18, 2017.[8] On July 6, 2018, the Commission received a response to its request for additional information in consideration of the advance notice, which, in turn, added a further 60 days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act.[9] The Commission did not receive any comments. This publication serves as notice that the Commission does not object to the proposed changes set forth in the advance notice, as modified by Amendment No. 1 (hereinafter, ''Advance Notice'').

I. Description of the Advance Notice

The Advance Notice consists of proposed changes to DTC's Rules, By-Laws and Organization Certificate of DTC (''Rules'')[10] in order to (1) modify the application of the Participants Fund; (2) modify the loss allocation process; (3) align DTC's loss allocation rule with the three clearing agencies of The Depository Trust & Clearing Corporation (''DTCC'')—Fixed Income Clearing Corporation (''FICC'') (including the Government Securities Division (''FICC/GSD'') and the Mortgage-Backed Securities Division (''FICC/MBSD'')), National Securities Clearing Corporation (''NSCC''), and DTC (collectively, the ''DTCC Clearing Agencies'');[11] (4) modify the voluntary retirement process; (5) reduce the time within which DTC is required to return a former Participant's Actual Participants Fund Deposit; and (6) make conforming and technical changes. Each of these proposed changes is described below. A detailed description of the specific rule text changes proposed in this Advance Notice can be found in the Notice of Amendment No. 1.[12]

A. Application of the Participants Fund

Under current Section 3 of Rule 4, if a Participant is obligated to DTC and fails to satisfy any obligation, DTC may, in such order and in such amounts as DTC shall determine in its sole discretion: (1) Apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation; (2) pledge some or all of the shares of Preferred Stock of such Participant to its lenders as collateral security for a loan under the End-of-Day Credit Facility;[13] and/or (3) sell some or all of the shares of Preferred Stock of such Participant to other Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to satisfy such obligation.

Current Rule 4 provides a single set of tools and a common process for the use of the Participants Fund for both (1) liquidity purposes to complete settlement among non-defaulting Participants, if one or more Participants fails to settle, and (2) the satisfaction of losses and liabilities due to Participant defaults[14] or non-default losses that are incident to the business of DTC.[15] For both liquidity[16] and loss scenarios, current Section 4 of Rule 4 provides that an application of the Participants Fund would be apportioned among Participants ratably in accordance with their Required Participants Fund Deposits, less any additional amount

was published in the **Federal Register** on January 8, 2018. Securities Exchange Act Release No. 82426 (January 2, 2018), 83 FR 913 (January 8, 2018) (SR–DTC–2017–022). On February 8, 2018, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82670 (February 8, 2018), 83 FR 6626 (February 14, 2018) (SR–DTC–2017–022, SR–FICC–2017–022, SR–NSCC–2017–018). On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82914 (March 20, 2018), 83 FR 12978 (March 26, 2018) (SR–DTC–2017–022). On June 25, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 83510 (June 25, 2018), 83 FR 30791 (June 29, 2018) (SR–DTC–2017–022, SR–FICC–2017–022, SR–NSCC–2017–018). On June 28, 2018, DTC filed Amendment No. 1 to the Proposed Rule Change, which was published in the **Federal Register** on July 19, 2018. Securities Exchange Act Release No. 83629 (July 13, 2018), 83 FR 34246 (July 19, 2018) (SR–DTC–2017–022). DTC submitted a courtesy copy of Amendment No. 1 to the Proposed Rule Change through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the Proposed Rule Change has been publicly available on the Commission's website at *https://www.sec.gov/rules/sro/dtc.htm* since June 29, 2018. The Commission did not receive any comments. The proposal, as set forth in both the advance notice and the Proposed Rule Change, each as modified by Amendments No. 1, shall not take effect until all required regulatory actions are completed.

[4] Securities Exchange Act Release No. 82582 (January 24, 2018), 83 FR 4297 (January 30, 2018) (SR–DTC–2017–804) (''Notice'').

[5] Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H). The Commission found that the advance notice raised complex issues and, accordingly, extended the review period of the advance notice for an additional 60 days until April 17, 2018. *See* Notice, *supra* note 4.

[6] 12 U.S.C. 5465(e)(1)(D).

[7] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); *see* Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Commission's Request for Additional Information,'' *available at http://www.sec.gov/rules/sro/dtc-an.shtml.*

[8] Securities Exchange Act Release No. 83746 (July 31, 2018), 83 FR 38357 (August 6, 2018) (SR–DTC–2017–804) (''Notice of Amendment No. 1''). DTC submitted a courtesy copy of Amendment No. 1 to the advance notice through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the advance notice has been publicly available on the Commission's website at *http://www.sec.gov/rules/sro/dtc-an.shtml* since June 29, 2018.

[9] 12 U.S.C. 5465(e)(1)(E) and (G); *see* 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 http://www.sec.gov/rules/sro/dtc-an.shtml.*

[10] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[11] DTCC is a user-owned and user-governed holding company and is the parent company of DTC, FICC, and NSCC. DTCC operates on a shared services model with respect to the DTCC Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a DTCC Clearing Agency.

[12] *See* Notice of Amendment No. 1, *supra* note 8.

[13] DTC states that it maintains a 364-day committed revolving line of credit with a syndicate of commercial lenders, renewed every year. DTC further states that the committed aggregate amount of the End-of-Day Credit Facility (currently $1.9 billion) together with the Participants Fund constitute DTC's liquidity resources for settlement. Based on these amounts, DTC sets Net Debit Caps that limit settlement obligations.

[14] DTC states that the failure of a Participant to satisfy its settlement obligation constitutes a liability to DTC. Insofar as DTC undertakes to complete settlement among Participants other than the Participant that failed to settle, that liability may give rise to losses as well.

[15] Section 1(f) of Rule 4 defines the term ''business'' with respect to DTC as ''the doing of all things in connection with or relating to the Corporation's performance of the services specified in the first and second paragraphs of Rule 6 or the cessation of such services.'' *Supra* note 10.

[16] DTC states that, in contrast to NSCC and FICC, DTC is not a central counterparty and does not guarantee obligations of its membership. DTC states that the Participants Fund is a mutualized pre-funded liquidity and loss resource. Therefore, in contrast to NSCC and FICC, DTC does not have an obligation to ''repay'' the Participants Fund, and the application of the Participants Fund does not convert to a loss.

that a Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A).[17] Current Section 4 of Rule 4 provides that if DTC incurs a loss or liability which is not satisfied by charging the Participant responsible for causing the loss or liability, DTC may, in its sole discretion and in such amount as DTC would determine, charge the existing retained earnings and undivided profits of DTC.

Under the current Rules, after the Participants Fund is applied pursuant to Section 4, DTC must promptly notify each Participant and the Commission of the amount applied and the reasons therefor. Current Rule 4 further requires Participants whose Actual Participants Fund Deposits have been ratably charged to restore their Required Participants Fund Deposits, if such charges create a deficiency. Such payments are due upon demand. Iterative pro rata charges relating to the same loss or liability are permitted in order to satisfy the loss or liability.

Rule 4 currently provides that a Participant may, within 10 Business Days after receipt of notice of any pro rata charge, notify DTC of its election to terminate its business with DTC, and the exposure of the terminating Participant for pro rata charges would be capped at the greater of (1) the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of the first pro rata charge, plus 100 percent of the amount thereof, or (2) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to terminate.

Proposed Section 3 of Rule 4 would provide that a Participant Default occurs when a Participant becomes a Defaulting Participant pursuant to Rule 9(B) or is otherwise obligated to DTC pursuant to the Rules and Procedures, and fails to satisfy any such obligation. The proposal would clarify that DTC would apply some or all of the Actual Participants Fund Deposit of a Defaulting Participant to its obligation to satisfy the Participant Default, to the extent necessary to eliminate such obligation. If such application would be insufficient to satisfy such obligation, DTC may, in its sole discretion, to the extent necessary to satisfy such obligation (1) pledge some or all of the shares of Preferred Stock of such Participant to its lenders as collateral security for a loan under the End-of-Day Credit Facility, and apply the proceeds of such loan to satisfy such obligation; and/or (2) sell some or all of the shares of Preferred Stock of such Participant to other Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to satisfy such obligation.

The proposed change would also amend and add provisions to separate use of the Participants Fund as a liquidity resource to complete settlement, reflected in proposed Section 4 of Rule 4, and for loss allocation, reflected in proposed Section 5 of Rule 4. DTC states that the proposed changes reinforce the distinction between the mechanisms to complete settlement on a Business Day, and to mutualize losses that may result from a failure to settle or other loss-generating events. DTC also states that the change would more closely align the loss allocation provisions of proposed Section 5 of Rule 4 to similar provisions of the NSCC and FICC rules, to the extent appropriate.

Proposed Section 4 would address the situation of a Defaulting Participant failure to settle if the application of the Actual Participants Fund Deposit of that Defaulting Participant, pursuant to proposed Section 3, is not sufficient to complete settlement among Participants other than the Defaulting Participant (each, a ''non-defaulting Participant'').[18]

Proposed Section 4 would expressly state that the Participants Fund shall constitute a liquidity resource which may be applied by DTC, in such amounts as it may determine, in its sole discretion, to fund settlement among non-defaulting Participants in the event of the failure of a Defaulting Participant to satisfy its settlement obligation on any Business Day. Such an application of the Participants Fund would be charged ratably to the Actual Participants Fund Deposits of the non-defaulting Participants on that Business Day. In connection with the use of the Participants Fund as a liquidity resource to complete settlement when a Participant fails to settle, the proposed rule would introduce the term ''pro rata settlement charge,'' in order to distinguish application of the Participants Fund to fund settlement from pro rata loss allocation charges that would be established in proposed Section 5 of Rule 4.

The pro rata settlement charge for each non-defaulting Participant would be based on the ratio of its Required Participants Fund Deposit to the sum of the Required Participants Fund Deposits of all such Participants on that Business Day (excluding any Additional Participants Fund Deposits in both the numerator and denominator of such ratio). The calculation of each non-defaulting Participant's pro rata settlement charge would be similar to the current Section 4 calculation of a pro rata charge except that it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[19] DTC states that it would be based on the Required Participants Fund Deposits as fixed on the Business Day of the application of the Participants Fund, as opposed to the current language ''at the time the loss or liability was discovered.'' [20] The proposed change would require DTC, following the application of the Participants Fund to complete settlement, to notify each Participant and the Commission of the charge and the reasons therefor (''Settlement Charge Notice'').

The proposed change would provide each non-defaulting Participant an opportunity to elect to terminate its business with DTC and thereby cap its exposure to further pro rata settlement

[17] Section 2 of Rule 9(A) provides, in part, ''[a]t the request of the Corporation, a Participant or Pledgee shall immediately furnish the Corporation with such assurances as the Corporation shall require of the financial ability of the Participant or Pledgee to fulfill its commitments and shall conform to any conditions which the Corporation deems necessary for the protection of the Corporation, other Participants or Pledgees, including deposits to the Participants Fund . . .'' *Supra* note 10. Pursuant to the proposed change, the additional amount that a Participant is required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A) would be defined as an ''Additional Participants Fund Deposit.''

[18] As described above, proposed Rule 4 splits the liquidity and loss provisions to more closely align to similar loss allocation provisions in NSCC and FICC rules. Pursuant to the proposed change, DTC would also align, where appropriate, the liquidity and loss provisions within proposed Rule 4. DTC would retain the existing Rule 4 concepts of calculating the ratable share of a Participant, charging each non-defaulting Participant a pro rata share of an application of the Participants Fund to complete settlement, providing notice to Participants of such charge, and providing each Participant the option to cap its liability for such charges by electing to terminate its business with DTC. However, pursuant to the proposed change, DTC would modify these concepts and certain associated processes to more closely align with the analogous proposed loss allocation provisions in proposed Rule 4 (*e.g.,* Loss Allocation Notice, Loss Allocation Termination Notification Period, and Loss Allocation Cap).

[19] Rule 4, Section 4(a)(1), *supra* note 10. DTC states that it has determined that this option is unnecessary because, in practice, DTC would never have liability under a Clearing Agency Agreement that exceeds the excess assets of the Participant that defaulted.

[20] DTC states that this change would provide an objective date that is more appropriate for the application of the Participants Fund to complete settlement, because the ''time the loss or liability was discovered'' would necessarily have to be the day the Participants Fund was applied to complete settlement.

charges. As proposed, Participants would have five Business Days [21] from the issuance of the first Loss Allocation Notice in any round to decide whether to terminate its business with DTC, and thereby benefit from its Settlement Charge Cap. In addition, the proposal would change the beginning date of such notification period from the receipt of the notice to the date of the issuance of the Settlement Charge Notice.[22] A Participant that elects to terminate its business with DTC would, subject to its cap, remain responsible for (1) its pro rata settlement charge that was the subject of the Settlement Charge Notice, and (2) all other pro rata settlement charges until the Participant Termination Date. The proposed cap on pro rata settlement charges of a Participant that has timely notified DTC of its election to terminate its business with DTC would be the amount of its Aggregate Required Deposit and Investment, as fixed on the day of the pro rata settlement charge that was the subject of the Settlement Charge Notice, plus 100 percent of the amount thereof (''Settlement Charge Cap''). The proposed Settlement Charge Cap would be no greater than the current cap.[23]

DTC states that the pro rata application of the Actual Participants Fund Deposits of non-defaulting Participants to complete settlement when there is a Participant Default is not the allocation of a loss. A pro rata settlement charge would relate solely to the completion of settlement. The proposed loss allocation concepts described below would not apply to pro rata settlement charges.[24]

B. Changes to the Loss Allocation Process

DTC's current loss allocation rules address the use of the Participants Fund for both liquidity purposes to complete settlement among non-defaulting Participants, and for the satisfaction of losses and liabilities due to Participant defaults or certain other losses or liabilities incident to the business of DTC, together. For both liquidity and loss scenarios, current Section 4 of Rule 4 provides that DTC may apply some or all of the Actual Participants Fund Deposits of all other Participants, and/or charge the existing retained earnings and undivided profits of DTC. Currently, if DTC applies the Actual Participants Fund Deposits, any loss or liability will be apportioned among Participants ratably in accordance with their Required Participants Fund Deposits, less any additional amount that a Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A). Current Section 4 of Rule 4 provides that if there is an unsatisfied loss or liability, DTC may, in its sole discretion, charge the existing retained earnings and undivided profits of DTC.

DTC proposes to change the manner in which each of the aspects of the loss allocation process described above would be employed. The proposal would clarify or adjust certain elements, and introduce certain new loss allocation concepts, as further discussed below. In addition, the proposal would address the loss allocation process as it relates to losses arising from or relating to multiple default or non-default events in a short period of time, also as described below.

DTC proposes five key changes to enhance DTC's loss allocation process. Specifically, DTC proposes to make changes regarding (1) the Corporate Contribution, (2) the Event Period, (3) the loss allocation round and notice, (4) the loss allocation termination notice and cap, and (5) the governance around non-default losses, each of which is discussed below.

(1) Corporate Contribution

Current Section 4 of Rule 4 provides that if there is an unsatisfied loss or liability, DTC may, in its sole discretion and in such amount as DTC would determine, charge the existing retained earnings and undivided profits of DTC. Under the proposed change, DTC would replace the discretionary application of an unspecified amount of retained earnings and undivided profits with a mandatory, defined Corporate Contribution. The proposed Corporate Contribution would apply to losses and liabilities that are incurred by DTC with respect to an Event Period, whether arising from a Default Loss Event or Declared Non-Default Loss Event, before the allocation of losses to Participants.[25]

The proposed Corporate Contribution would be defined to be an amount equal to 50 percent of DTC's General Business Risk Capital Requirement.[26] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[27] is, at a minimum, equal to the regulatory capital that DTC is required to maintain in compliance with Rule 17Ad–22(e)(15) under the Act.[28] The proposed Corporate Contribution would be held in addition to DTC's General Business Risk Capital Requirement. Proposed Rule 4 also would further clarify that DTC can voluntarily apply amounts greater than the Corporate Contribution against any loss or liability (including non-default losses) of DTC, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time. As proposed, if the Corporate Contribution is fully or partially used against a loss or liability relating to an Event Period, the Corporate Contribution would be reduced to the remaining unused amount, if any, during the following 250

[21] DTC states a five Business Day period would be sufficient for a Participant to decide whether to give notice to terminate its business with DTC in response to a settlement charge. In addition, a five Business Day pro rata settlement charge notification period would conform to the proposed loss allocation notification period in this proposed change and in the proposed changes for NSCC and FICC. *See infra* note 34.

[22] DTC states that setting the start date of the notification period to an objective date would enhance transparency and provide a common timeframe to all affected Participants.

[23] Current Section 8 of Rule 4 provides for a cap that is equal to the greater of (a) the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of the first pro rata charge, plus 100 percent of the amount thereof, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to limit its obligation as provided above. *Supra* note 10. The alternative limit in clause (b) would be eliminated in proposed Section 8(a) in favor of a single defined standard.

[24] DTC states that proposed Sections 3, 4 and 5 of Rule 4 together relate, in whole or in part, to what may happen when there is a Participant Default. Proposed Section 3 is designed to be the basic provision of remedies if a Participant fails to satisfy an obligation to DTC. Proposed Section 4 is designed to be a specific remedy for a failure to settle by a Defaulting Participant (*i.e.,* a specific type of Participant Default). Proposed Section 5 is designed to be a remedial provision for a Participant Default when, additionally, DTC ceases to act for the Participant and there are remaining losses or liabilities. DTC states that if a Participant Default occurs, the application of proposed Section 3 would be required, while the application of proposed Section 4 would be at the discretion of DTC. Whether or not proposed Section 4 has been applied, once there is a loss due to a Participant Default and DTC ceases to act for the Participant, proposed Section 5 would apply.

[25] The proposed change would not apply the Corporate Contribution if the Participants Fund is used with respect to a pro rata settlement charge. However, if, after a Participant Default, the proceeds of the sale of the Collateral of the Participant are insufficient to repay the lenders under the End-of-Day Credit Facility, and DTC has ceased to act for the Participant, the shortfall would be a loss arising from a Default Loss Event, the Corporate Contribution would be applied.

[26] DTC calculates its General Business Risk Capital Requirement as the amount equal to the greatest of (1) an amount determined based on its general business profile, (2) an amount determined based on the time estimated to execute a recovery or orderly wind-down of DTC's critical operations, and (3) an amount determined based on an analysis of DTC's estimated operating expenses for a six month period.

[27] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–NSCC–2017–004, SR–FICC–2017–007).

[28] 17 CFR 240.17Ad–22(e)(15).

Business Days in order to permit DTC to replenish the Corporate Contribution.[29] Under the proposal, Participants would receive notice of any such reduction to the Corporate Contribution.

(2) Event Period

DTC states that in order to clearly define the obligations of DTC and its Participants regarding loss allocation and to balance the need to manage the risk of sequential loss events against Participants' need for certainty concerning their maximum loss allocation exposures, DTC proposes to introduce the concept of an Event Period to the Rules to address the losses and liabilities that may arise from or relate to multiple Default Loss Events and/or Declared Non-Default Loss Events that arise in quick succession. Specifically, the proposal would group Default Loss Events and Declared Non-Default Loss Events occurring within a period of 10 Business Days (''Event Period'') for purposes of allocating losses to Participants in one or more rounds, subject to the limits of loss allocation as explained below.[30]

In the case of a loss or liability arising from or relating to a Default Loss Event, an Event Period would begin on the day on which DTC notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day). In the case of a Declared Non-Default Loss Event, an Event Period would begin on the day that DTC notifies Participants of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day). If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period. An Event Period may include both Default Loss Events and Declared Non-Default Loss Events, and there would not be separate Event Periods for Default Loss Events or Declared Non-Default Loss Events occurring during overlapping 10 Business Day periods. The amount of losses that may be allocated by DTC, subject to the required Corporate Contribution, and to which a Loss Allocation Cap would apply for any Participant that elects to terminate its business with DTC in respect of a loss allocation round, would include any and all losses from any Default Loss Events and any Declared Non-Default Loss Events during the Event Period, regardless of the amount of time, during or after the Event Period, required for such losses to be crystallized and allocated.[31]

DTC states that in order to enhance clarity, the proposed change would define ''Default Loss Event'' as the determination by DTC to cease to act for a Participant (''CTA Participant'') pursuant to Rule 10, Rule 11, or Rule 12. The proposed change also would define ''Declared Non-Default Loss Event'' as the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of DTC may be a significant and substantial loss or liability that may materially impair the ability of DTC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that DTC may continue to offer its services in an orderly manner.

(3) Loss Allocation Round and Loss Allocation Notice

Under the proposal, a loss allocation ''round'' would mean a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Participants (a ''round cap''). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period would be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. DTC may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among Participants that have not submitted a Termination Notice in accordance with proposed Section 6(b) of Rule 4.

Each loss allocation would be communicated to Participants by the issuance of a notice that advises each Participant of the amount being allocated to it (''Loss Allocation Notice''). The calculation of each Participant's pro rata allocation charge would be similar to the current Section 4 calculation of a pro rata charge except that it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[32] In addition, it would be based on the Required Participants Fund Deposits as fixed on the first day of the Event Period, as opposed to the current language ''at the time the loss or liability was discovered.'' [33]

Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. Multiple Loss Allocation Notices may be issued with respect to each round, up to the round cap. The first Loss Allocation Notice in any first, second, or subsequent round would expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in that round has five Business Days [34] from the issuance of such first Loss Allocation Notice for the round (such period, a ''Loss Allocation Termination Notification Period'') to notify DTC of its election to terminate its business with DTC (such notification, whether with respect to a Settlement Charge Notice or Loss Allocation Notice, a ''Termination Notice'') pursuant to proposed Section 8(b) of Rule 4, and thereby benefit from its Loss Allocation Cap. In other words, the proposed change would link the Loss Allocation Cap to a round in order to provide Participants the option to limit their loss allocation exposure at the beginning of each round. After a first round of loss allocations with respect to an Event Period, only Participants that have not

[29] DTC states that 250 Business Days would be a reasonable estimate of the time frame that DTC would be required to replenish the Corporate Contribution by equity in accordance with DTC's Clearing Agency Policy on Capital Requirements, including a conservative additional period to account for any potential delays and/or unknown exigencies in times of distress.

[30] DTC states that having a 10 Business Day Event Period would provide a reasonable period of time to encompass potential sequential Default Loss Events and/or Declared Non-Default Loss Events that are likely to be closely linked to an initial event and/or a severe market dislocation episode, while still providing appropriate certainty for Participants concerning their maximum exposure to allocated losses with respect to such events.

[31] Each Participant that is a Participant on the first day of an Event Period would be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Default Loss Event (other than a Default Loss Event with respect to which it is the CTA Participant) and each Declared Non-Default Loss Event occurring during the Event Period.

[32] *See supra* note 19.

[33] DTC states that this change would provide an objective date that is appropriate for the new proposed loss allocation process, which would be designed to allocate aggregate losses relating to an Event Period, rather than one loss at a time.

[34] Current Section 8 of Rule 4 provides that the time period for a Participant to give notice of its election to terminate its business with DTC in respect of a pro rata charge is 10 Business Days after receiving notice of a pro rata charge. DTC states that it is appropriate to shorten such time period from 10 Business Days to five Business Days because DTC needs timely notice of which Participants would not be terminating their business with DTC for the purpose of calculating the loss allocation for any subsequent round. DTC states that five Business Days would provide Participants with sufficient time to decide whether to cap their loss allocation obligations by terminating their business with DTC.

submitted a Termination Notice, in accordance with proposed Section 8(b) of Rule 4, would be subject to further loss allocation with respect to that Event Period.

DTC's current loss allocation provisions provide that if a charge is made against a Participant's Actual Participants Fund Deposits, and as result thereof the Participant's deposit is less than its Required Participants Fund Deposit, the Participant will, upon demand by DTC, be required to replenish its deposit to eliminate the deficiency within such time as DTC shall require. Under the proposal, Participants would receive two Business Days' notice of a loss allocation, and be required to pay the requisite amount no later than the second Business Day following the issuance of such notice.[35]

(4) Termination Notice and Loss Allocation Cap

DTC's current Rules provide that a Participant may terminate its business with DTC by notifying DTC. DTC proposes to enhance the termination procedure to clarify and align with the rules of NSCC and FICC, where appropriate. As proposed, Participants would have five Business Days from the issuance of the first Loss Allocation Notice in any round to decide whether to terminate its business with DTC, and thereby benefit from its Loss Allocation Cap. The start of each round [36] would allow a Participant the opportunity to notify DTC of its election to terminate its business with DTC after satisfaction of the losses allocated in such round. In addition, DTC would also change the beginning date of such notification period from the receipt of the notice to the date of the issuance of the first Loss Allocation Notice for any round. Pursuant to the proposed change, a Participant would be able to elect to terminate its membership by following the requirements in proposed Section 8(b) of Rule 4: (1) Specify in its Termination Notice an effective date of termination (''Participant Termination Date''), which date shall be no later than 10 Business Days following the last day of the applicable Loss Allocation Termination Notification Period; (2) cease all activities and use of DTC's services other than activities and services necessary to terminate the business of the Participant with DTC; and (3) ensure that all activities and use of DTC services by such Participant cease on or prior to the Participant Termination Date.

Under the current Rules, the exposure of the terminating Participant for pro rata charges would be capped at the greater of (1) the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of the first pro rata charge, plus 100 percent of the amount thereof, or (2) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to terminate. Under the proposal, if a Participant timely provides notice of its election to terminate its business with DTC as provided in proposed Section 8(b) of Rule 4, its maximum payment obligation with respect to any loss allocation round would be the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100 percent of the amount thereof (''Loss Allocation Cap'').[37] DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap. If a Participant's Loss Allocation Cap exceeds the Participant's then-current Required Participants Fund Deposit, the Participant would still be required to pay for the excess amount.

Specifically, the first round and each subsequent round of loss allocation would allocate losses up to a round cap of the aggregate of all Loss Allocation Caps of those Participants included in the round. If a Participant provides notice of its election to terminate its business with DTC, it would be subject to loss allocation in that round, up to its Loss Allocation Cap. If the first round of loss allocation does not fully cover DTC's losses, a second round will be noticed to those Participants that did not elect to terminate in the previous round; however, the amount of any second or subsequent round cap may differ from the first or preceding round cap because there may be fewer Participants in a second or subsequent round if Participants elect to terminate their business with DTC as provided in proposed Section 8(b) of Rule 4 following the first Loss Allocation Notice in any round.

(5) Declared Non-Default Loss Event

The Rules currently permit DTC to apply the Participants Fund to non-default losses,[38] provided that such loss or liability is incident to the business of DTC. DTC proposes to enhance the governance around non-default losses that would trigger loss allocation to Participants by specifying that the Board of Directors would have to determine that there is a non-default loss that may be a significant and substantial loss or liability that may materially impair the ability of DTC to provide clearance and settlement services in an orderly manner and would potentially generate losses to be mutualized among the Participants in order to ensure that DTC may continue to offer clearance and settlement services in an orderly manner. The proposed change would provide that DTC would then be required to promptly notify Participants of this determination, which would be referred to as a ''Declared Non-Default Loss Event.'' In addition, DTC proposes to specify that (1) the Corporate Contribution would apply to losses or liabilities arising from a Default Loss Event or a Declared Non-Default Loss Event, and (2) the loss allocation process would be applied in the same manner regardless of whether a loss arises from a Default Loss Event or a Declared Non-Default Loss Event.

C. Voluntary Retirement Process

Section 1 of Rule 2 provides that a Participant may terminate its business with DTC by notifying DTC in the appropriate manner.[39] To provide additional transparency to Participants with respect to the voluntary retirement of a Participant, and to align, where appropriate, with the proposed rule changes of NSCC and FICC with respect to voluntary termination, DTC is proposing to add proposed Section 6(a) to Rule 4, which would be titled, ''Upon Any Voluntary Retirement.'' Proposed

[35] DTC states that allowing Participants two Business Days to satisfy their loss allocation obligations would provide Participants sufficient notice to arrange funding, if necessary, while allowing DTC to address losses in a timely manner.

[36] Under the proposal, a Participant would only have the opportunity to terminate after the first Loss Allocation Notice in any round, and not after each Loss Allocation Notice in any round.

[37] The alternative limit in clause (b) would be eliminated in proposed Section 8(b) in favor of a single defined standard. *See supra* note 23.

[38] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[39] Section 1 of Rule 2 provides, in relevant part, that ''[a] Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant. In the event that a Participant shall cease to be a Participant, the Corporation shall thereupon cease to make its services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant.'' *Supra* note 10. DTC is proposing to modify the provision to clarify that the termination would be subject to proposed Section 6 of Rule 4.

Section 6(a) of Rule 4 would (1) clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC, and (2) address the situation where a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date.

Specifically, DTC is proposing that if a Participant elects to terminate its business with DTC pursuant to Section 1 of Rule 2 for reasons other than those specified in proposed Section 8 (a ''Voluntary Retirement''), the Participant would be required to: (1) Provide a written notice of such termination to DTC (''Voluntary Retirement Notice''), as provided for in Section 1 of Rule 2; (2) specify in the Voluntary Retirement Notice a desired date for the termination of its business with DTC (''Voluntary Retirement Date''); (3) cease all activities and use of DTC services other than activities and services necessary to terminate the business of the Participant with DTC; and (4) ensure that all activities and use of DTC services by the Participant cease on or prior to the Voluntary Retirement Date.[40] Proposed Section 6(a) of Rule 4 would provide that if the Participant fails to comply with the requirements of proposed Section 6(a), its Voluntary Retirement Notice would be deemed void.

Further, proposed Section 6(a) of Rule 4 would provide that if a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date, such Participant must timely submit a Termination Notice in order to benefit from its Settlement Charge Cap or Loss Allocation Cap, as the case may be. In such a case, the Termination Notice would supersede and void the pending Voluntary Retirement Notice submitted by the Participant.

D. Accelerated Return of Former Participant's Clearing Fund Deposit

Current Rule 4 provides that after three months from when a Person has ceased to be a Participant, DTC shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment (including any amount added to the Actual Participants Fund Deposit of the former Participant through the sale of the Participant's Preferred Stock), provided that DTC receives such indemnities and guarantees as DTC deems satisfactory with respect to the matured and contingent obligations of the former Participant to DTC. Otherwise, within four years after a Person has ceased to be a Participant, DTC shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment, except that DTC may offset against such payment the amount of any known loss or liability to DTC arising out of or related to the obligations of the former Participant to DTC.

DTC proposes to reduce the time, after a Participant ceases to be a Participant, at which DTC would be required to return the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest, whether the Participant ceases to be such because it elected to terminate its business with DTC in response to a Settlement Charge Notice or Loss Allocation Notice or otherwise. Pursuant to the proposed change, the time period would be reduced from four years to two years. All other requirements relating to the return of the Actual Participants Fund Deposit would remain the same.

DTC states that the four year retention period was implemented at a time when there were more deposits and processing of physical certificates, as well as added risks related to manual processing, and related claims could surface many years after an alleged event. DTC states that the change to two years is appropriate because, currently, as DTC and the industry continue to move toward automation and dematerialization, claims typically surface more quickly. Therefore, DTC states that a shorter retention period of two years would be sufficient to maintain a reasonable level of coverage for possible claims arising in connection with the activities of a former Participant, while allowing DTC to provide some relief to former Participants by returning their Actual Participants Fund Deposits more quickly.

E. Conforming and Technical Changes

DTC proposes to make various conforming and technical changes necessary to harmonize the remaining current Rules with the proposed changes. Such changes include, but are not limited to, (1) inserting, deleting, or changing various terms, sentences, or headings for clarity and consistency; (2) consolidating certain sections of the Rules for clarity; and (3) amending Rule 1 (Definitions; Governing Law) to add cross-references to proposed terms that would be defined in Rule 4.

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose 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 and strengthening the liquidity of systemically important financial market utilities.[41]

Section 805(a)(2) of the Clearing Supervision Act[42] authorizes the Commission to prescribe 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. Section 805(b) of the Clearing Supervision Act[43] provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[44] and Section 17A of the Act[45] (''Rule 17Ad–22'').[46] Rule 17Ad–22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[47] Therefore, it is appropriate for the Commission to review proposed changes in advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing

[40] Typically, a Participant would ultimately submit a notice after having ceased its transactions and transferred all securities out of its Account.

[41] *See* 12 U.S.C. 5461(b).

[42] 12 U.S.C. 5464(a)(2).

[43] 12 U.S.C. 5464(b).

[44] 12 U.S.C. 5464(a)(2).

[45] 15 U.S.C. 78q–1.

[46] 17 CFR 240.17Ad–22.

[47] *Id.*

Supervision Act [48] and against Rule 17Ad–22.[49]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposed changes in the Advance Notice are designed to help DTC promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system as discussed below.

The proposal would clarify that if a Participant fails to satisfy its obligations, such Participant's Actual Participants Fund Deposit would be used to eliminate any unpaid obligations of that Participant to DTC, as described above. Further, the proposal would modify the application of the Participants Fund, and clarify that the Participants Fund may be used (1) as a liquidity resource for DTC to fund settlement among non-defaulting Participants, and (2) to satisfy losses and liabilities of DTC in the loss allocation process. In addition, the proposal would add the term ''Participant Default'' to current Section 3 to clarify that proposed Section 3 would apply when there is a failure of a Participant to satisfy any obligation to DTC. The proposal would expressly provide for the application of the Actual Participants Fund Deposit of the defaulting Participant to satisfy its unpaid obligations. The proposal would explicitly state that the Participants Fund shall constitute a liquidity resource which may be applied by DTC to fund settlement among non-defaulting Participants in the event of the failure of a Defaulting Participant to satisfy its settlement obligation. In addition, the proposal would provide two separate procedures to charge the Participants Fund: One to use it as a liquidity resource and another to pay for allocated losses.

The proposal is designed to give authority explicitly to DTC to use the Participants Fund as a liquidity resource to fund settlement among non-defaulting Participants. With such clear authority to use the Participants Fund as a liquidity resource, DTC would have additional liquidity during a stress event, and thus be better able to manage its liquidity risks stemming from a Defaulting Participant. This access to liquidity during a stress event would help mitigate any risk to settlement finality due to DTC having insufficient funds to meet all its payment obligations to its Participants. As such, access to this liquidity would help to strengthen liquidity of DTC, which is designated as systemically important,[50] and thereby support the stability of the broader financial system. Moreover, the Commission believes that these changes provide clarity to the application of the Participants Fund and would enable DTC and Participants to better anticipate and prepare for their potential exposures, which, in turn, would allow them to better manage their risk, thereby promoting robust risk management as well as safety and soundness.

In addition to the changes to the Participant Fund application, DTC proposes to make the following changes to its loss allocation process. First, DTC would establish a mandatory Corporate Contribution to be applied to DTC's losses and liabilities. The proposed Corporate Contribution would be defined to be an amount equal to 50 percent of DTC's General Business Risk Capital Requirement. The proposed changes also would clarify that the proposed Corporate Contribution would apply to both Default Loss Events and Declared Non-Default Loss Events. Moreover, the proposal specifies that if the Corporate Contribution is applied to a loss or liability relating to an Event Period, then for any subsequent Event Periods that occur during the 250 business days thereafter, the Corporate Contribution would be reduced to the remaining, unused portion of the Corporate Contribution. The Commission believes that these changes set clear expectations about how and when DTC's Corporate Contribution would be applied to help address a loss, and allow DTC to better anticipate and prepare for potential exposures that may arise during an Event Period.

Second, as described above, DTC proposes to introduce the concept of an Event Period, which would group Default Loss Events and Declared Non-Default Loss Events occurring within a period of 10 Business Days for purposes of allocating losses to Participants in one or more rounds. Under the current Rules, every time DTC incurs a loss or liability, DTC will initiate its current loss allocation process by applying its retained earnings and allocating losses. The current Rules do not contemplate a situation where loss events occur in quick succession. Accordingly, even if multiple losses occur within a short period, the current Rules dictate that DTC start the loss allocation process separately for each loss event. Having multiple loss allocation calculations and notices from DTC and Termination Notices from Participants after multiple sequential loss events could cause operational risk to DTC, since multiple notices may cause confusion at a time of significant stress.

The Commission believes that the proposed change to introduce an Event Period would improve upon the current loss allocation process described immediately above. Specifically, the introduction of an Event Period would provide a more defined and transparent structure than the current loss allocation process. Such an improved structure should enable both DTC and each Participant to more effectively manage the risks and potential financial obligations presented by sequential Default Loss Events and/or Declared Non-Default Loss Events that are likely to arise in quick succession, and could be closely linked to an initial event and/or market dislocation episode. In other words, the proposed Event Period structure should help clarify and define for both DTC and Participants how DTC would initiate a single defined loss allocation process to cover all loss events within 10 Business Days. As a result, all loss allocation calculation and notices from DTC and potential Termination Notices from Participants would be tied back to one Event Period instead of each individual loss event.

Third, as described above, the proposal would improve upon the approach laid out in DTC's current Rules by providing for a loss allocation round, a Loss Allocation Notice process, a Termination Notice process, and a Loss Allocation Cap. A loss allocation round would be a series of loss allocations relating to an Event Period, the aggregate amount of which would be limited by the round cap. When the losses allocated in a round equals the round cap, any additional losses relating to the Event Period would be allocated in subsequent rounds until all losses from the Event Period are allocated among Participants. Each loss allocation would be communicated to Participants by the issuance of a Loss Allocation Notice. Each Participant in a loss allocation round would have five Business Days from the issuance of such first Loss Allocation Notice for the round to notify DTC of its election to terminate its business with DTC, and thereby benefit from its Loss Allocation Cap. The Loss Allocation Cap of a Participant would be the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100 percent of the amount thereof. Participants would have two Business Days after DTC issues a first round Loss Allocation Notice to pay the amount specified in such notice.

[48] 12 U.S.C. 5464(b).

[49] 17 CFR 240.17Ad–22.

[50] *See infra* note 52.

The Commission believes that the changes to (1) establish a specific Event Period, (2) continue the loss allocation process in successive rounds, (3) clearly communicate with its Participants regarding their loss allocation obligations, and (4) effectively identify continuing Participants for the purpose of calculating loss allocation obligations in successive rounds, are designed to make DTC's loss allocation process more certain. In addition, the changes are designed to provide Participants with a clear set of procedures that operate within the proposed loss allocation structure, and provide increased predictability and certainty regarding Participants' exposures and obligations. Furthermore, by grouping all loss events within 10 Business Days, the loss allocation process relating to multiple loss events can be streamlined. With enhanced certainty, predictability, and efficiency, DTC would then be able to better manage its risks from loss events occurring in quick succession, and Participants would be able to better manage their risks by deciding whether and when to withdraw from membership and limit their exposures to DTC. Furthermore, the proposed changes are designed to reduce liquidity risk to Participants by providing a two-day window to arrange funding to pay for loss allocation, while still allowing DTC to address losses in a timely manner.

Fourth, as described above, DTC proposes to clarify the governance around Declared Non-Default Loss Events by providing that the Board of Directors would have to determine that there is a non-default loss that may be a significant and substantial loss or liability that may materially impair the ability of DTC to provide its services in an orderly manner. DTC also proposes to provide that DTC would then be required to promptly notify Participants of this determination and start the loss allocation process concerning the loss stemming from a Declared Non-Default Loss Event.

The Commission believes that the immediately above described changes should provide an orderly and transparent procedure to allocate a non-default loss by requiring the Board of Directors to make a definitive decision to announce an occurrence of a Declared Non-Default Loss Event, and requiring DTC to provide a notice to Participants of such decision. The Commission further believes that an orderly and transparent procedure should result in a risk management process at DTC that is more robust as a result of enhanced governance around DTC's response to non-default losses, thereby promoting safety and soundness.

Collectively, the Commission believes that the proposed changes to DTC's loss allocation process would provide greater transparency, certainty, and efficiency to both DTC and Participants regarding the amount of resources and the instances in which DTC would apply such resources to address risks arising from Default Loss Events and Declared Non-Default Loss Events, which could occur in quick succession. The Commission believes that such transparency, certainty, and efficiency would allow better predictability to DTC and its Participants regarding their exposures, and in turn, would allow a risk management process at DTC and its Participants that is more robust in response to such events and would improve their ability to continue to operate and recover in a safe and sound manner during such events. Therefore, the Commission believes that the proposal promotes robust risk management as well as safety and soundness.

In addition to the key changes discussed above, DTC proposes to provide additional transparency to Participants with respect to voluntary retirement. In particular, the proposal provides that if a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Notice of the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date, such Participant must timely submit a Termination Notice in order to benefit from its Settlement Charge Cap or Loss Allocation Cap, as the case may be. This proposed change helps to eliminate uncertainty as to the obligations of a Participant that submits a termination notice to DTC pursuant to the current Rules, and later receives a Settlement Charge Notice or a Loss Allocation Notice pursuant to the proposed Rules. Accordingly, the Commission believes that the proposal is designed to promote robust risk management by eliminating such uncertainty by providing a clear termination process, which, in turn should promote safety and soundness by enabling better management obligations to DTC.

Furthermore, the proposed changes would align the loss allocation rules of the DTCC Clearing Agencies to the extent practicable and appropriate. The alignment is designed to help provide consistent treatment for firms that are participants of multiple DTCC Clearing Agencies. The Commission believes that providing consistent treatment through consistent procedures among the DTCC Clearing Agencies would help firms that participate in multiple DTCC Clearing Agencies from encountering unnecessary complexities and confusion stemming from differences in procedures regarding loss allocation processes, particularly at times of significant stress. Accordingly, the Commission believes that the change is designed to reduce systemic risk and support the stability of the broader financial system.

Also, DTC proposes to reduce the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant from four years to two years. The Commission believes that this reduction in time would enable firms that have exited DTC to have access to their funds sooner than under the current Rules. While acknowledging that the reduction in time could lesson DTC's flexibility in liquidity management for the period between two years and four years, the Commission believes that DTC's procedures would continue to protect DTC and its clearance and settlement services because the rule would maintain the provisions that DTC (1) may offset the return of funds against the amount of any loss or liability of DTC arising out of or relating to the obligations of the former Participant, and (2) could retain the funds for up to two years. Therefore, DTC could maintain a necessary level of coverage for possible claims arising in connection with the DTC activities of a former Participant. Accordingly, the Commission believes that the proposed changes to accelerate the return of a former Participant's Actual Participants Fund Deposit are designed to reduce the systemic risks by reducing financial risks for participants of multiple DTCC Clearing Agencies, and in turn, support the stability of the broader financial system.

Finally, DTC proposes to make conforming and technical changes necessary to harmonize the current Rules with the proposed changes. The Commission believes that these changes are designed to provide clear and coherent Rules concerning loss allocation process to DTC and its Participants. The Commission further believes that clear and coherent Rules should help enhance the ability of DTC and Participants to more effectively plan for, manage, and address the risks and financial obligations that loss events present to DTC and its Participants. Accordingly, the Commission believes that the conforming and technical changes are designed to promote robust risk management.

Therefore, for all of the reasons stated above, the Commission believes that the

changes proposed in the Advance Notice are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.[51]

B. Consistency With Rule 17Ad–22(e)(4)(viii)

Rule 17Ad–22(e)(4)(viii) under the Act requires, in part, that a covered clearing agency [52] establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by addressing allocation of credit losses the covered clearing agency may face if its collateral and other resources are insufficient to fully cover its credit exposures.[53]

As described above, the proposal would revise the loss allocation process to address how DTC would manage loss events, including Defaulting Loss Events. Under the proposal, if losses arise out of or relate to a Defaulting Loss Event, DTC would first apply its Corporate Contribution. If such funds prove insufficient, the proposal provides for allocating the remaining losses to the remaining Participants through the proposed process. Accordingly, the Commission believes that the proposal is reasonably designed to manage DTC's credit exposures to its Participants, by addressing allocation of credit losses.

Therefore, the Commission believes that DTC's proposal is consistent with Rule 17Ad–22(e)(4)(viii) under the Act.[54]

C. Consistency With Rule 17Ad–22(e)(7)(i)

Rule 17Ad–22(e)(7)(i) under the Act requires, in part, 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, by maintaining sufficient liquid resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios.[55]

As described above, the proposal would clarify that the Participants Fund may be used as a liquidity resource which may be applied by DTC to fund settlement among non-defaulting Participants. In addition, the proposal would provide a separate procedure to charge the Participants Fund to use it as a liquidity resource. The proposed change is designed to help DTC manage its settlement and funding flows on a more timely basis and better effect same day settlement of payment obligations in certain foreseeable stress scenarios.

Therefore, the Commission believes that the proposal is reasonably designed to help DTC effectively manage liquidity risk in a timely manner to complete settlement, and accordingly is consistent with Rule 17Ad–22(e)(7)(i).[56]

D. Consistency With Rule 17Ad–22(e)(13)

Rule 17Ad–22(e)(13) under the Act requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority to take timely action to contain losses and liquidity demands and continue to meet its obligations.[57]

As described above, the proposal would establish a more detailed and structured loss allocation process by (1) applying a defined and mandatory Corporate Contribution to a loss; (2) introducing an Event Period; (3) introducing a loss allocation round and notice process; (4) modifying the termination process and the cap of terminating Participant's loss allocation exposure; and (5) providing the governance around a non-default loss. The Commission believes that each of these proposed changes helps establish a more transparent and clear loss allocation process and authority of DTC to take certain actions, such as announcing a Declared Non-Default Loss Event, within the loss allocation process. Further, having a more transparent and clear loss allocation process as proposed would provide clear authority to DTC to allocate losses from Default Loss Events and Declared Non-Default Loss Events and take timely actions to contain losses, and continue to meet its clearance and settlement obligations.

Therefore, the Commission believes that DTC's proposal is consistent with Rule 17Ad–22(e)(13) under the Act.[58]

E. Consistency With Rule 17Ad–22(e)(23)(i) and (ii)

Rule 17Ad–22(e)(23)(i) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures.[59] Rule 17Ad–22(e)(23)(ii) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[60]

As described above, the proposal would publicly disclose how DTC's Corporate Contribution would be calculated and applied. In addition, the proposal would establish and publicly disclose a detailed procedure in the Rules for loss allocation. More specifically, the proposed changes would establish an Event Period, loss allocation rounds, a termination process followed by a settlement charge process or loss allocation process, and a Loss Allocation Cap that would apply to Participants after termination. Additionally, the proposal would align the loss allocation rules across the DTCC Clearing Agencies, to help provide consistent treatment, and clarify that non-default losses would trigger loss allocation to Participants. The proposal would also provide for and make known to members the procedures to trigger a loss allocation procedure, contribute DTC's Corporate Contribution, allocate losses, and withdraw and limit Participant's loss exposure. Accordingly, the Commission believes that the proposal is reasonably designed to (1) publicly disclose all relevant rules and material procedures concerning key aspects of DTC's default rules and procedures, and (2) provide sufficient information to enable Participants to identify and evaluate the risks by participating in DTC.

[51] 12 U.S.C. 5464(b).

[52] A ''covered clearing agency'' means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1 *et seq.*) that is designated systemically important by the Financial Stability Oversight Counsel (''FSOC'') pursuant to the Clearing Supervision Act (12 U.S.C. 5461 *et seq.*). *See* 17 CFR 240.17Ad–22(a)(5) and (6). On July 18, 2012, FSOC designated DTC as systemically important. U.S. Department of the Treasury, ''FSOC Makes First Designations in Effort to Protect Against Future Financial Crises,'' *available at https://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx*. Therefore, DTC is a covered clearing agency.

[53] 17 CFR 240.17Ad–22(e)(4)(viii).

[54] *Id.*

[55] 240.17Ad–22(e)(7)(i).

[56] *Id.*

[57] 240.17Ad–22(e)(13).

[58] *Id.*

[59] 17 CFR 240.17Ad–22(e)(23)(i).

[60] 17 CFR 240.17Ad–22(e)(23)(ii).

Therefore, the Commission believes that DTC's proposal is consistent with Rules 17Ad–22(e)(23)(i) and (ii) under the Act.[61]

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[62] that the Commission *does not object* to advance notice SR–DTC–2017–804, as modified by Amendment No. 1, and that DTC is *authorized* to implement the proposal as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–DTC–2017–022, as modified by Amendment No. 1, whichever is later.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18864 Filed 8–29–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83938; File No. SR–CboeBZX–2018–047]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend BZX Rule 14.8, General Listings Requirements—Tier I, To Adopt Listing Standards for Closed-End Funds

August 24, 2018.

On June 21, 2018, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BZX Rule 14.8, titled ''General Listings Requirements—Tier I,'' in order to adopt listing standards for closed-end funds. The proposed rule change was published for comment in the **Federal Register** on July 11, 2018.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 25, 2018. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates October 9, 2018, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–CboeBZX–2018–047).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18783 Filed 8–29–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10508]

60-Day Notice of Proposed Information Collection: Special Immigrant Visa Supervisor Locator

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 29, 2018.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2018–0033'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Special Immigrant Visa Supervisor Locator.
- *OMB Control Number:* 1405–0144.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–158.
- *Respondents:* Special Immigrant Visa Applicants.
- *Estimated Number of Respondents:* 150.
- *Estimated Number of Responses:* 150.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 150 hours.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Department of State uses Form DS–158 (Special Immigrant Visa Supervisor Locator) in order to assist applicants for special immigrant visa (SIV) applicants under section 602(b) of the Afghan Allies Protection Act of 2009 (Pub. L. 111–8), in attempting to locate an applicant's prior Department of Defense (DoD) supervisor. The information

[61] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[62] 12 U.S.C. 5465(e)(1)(I).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83596 (July 5, 2018), 83 FR 32162.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

requested on the form is limited to that necessary to locate the supervisor through DoD and Veteran's Affairs, and if the location is successful will assist the applicant in the SIV application process.

Methodology

Applicants are required to complete the DS–158 and to submit their package to the appropriate email address.

Edward J. Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2018–18807 Filed 8–29–18; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 10526]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Harry Potter: A History of Magic'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Harry Potter: A History of Magic,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The New-York Historical Society Museum & Library, New York, New York, from on or about October 5, 2018, until on or about January 27, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–13 of August 23, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–18823 Filed 8–29–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10525]

Determination Under Section 7070(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 and the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 Regarding the Central Government of Syria

Pursuant to section 7070(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 (Div. J, Pub. L. 115–31) and the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141), I hereby determine that the Government of the Syrian Arab Republic has recognized the independence of, or has established diplomatic relations with, the Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia.

This determination shall be published in the **Federal Register** and on the Department of State website and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: August 22, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–18860 Filed 8–29–18; 8:45 am]

BILLING CODE 4710–23–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36160]

Great Lakes Terminal Railroad, LLC—Lease and Operation Exemption—Rail Line of Great Lakes Reloading, LLC

AGENCY: Surface Transportation Board.

ACTION: Correction to Notice of Exemption.

On December 20, 2017, Great Lakes Terminal Railroad, LLC (GLTRR), a noncarrier at the time,[1] filed a verified notice of exemption under 49 CFR 1150.31 to sublease from Great Lakes Reloading, LLC, and to operate, approximately 12,500 feet (2.37 miles) of railroad right-of-way and trackage and transloading facilities located at 13535 S. Torrence Avenue, in Chicago, Ill. The notice was served and published in the **Federal Register** on January 5, 2018, (83 FR 691), and became effective on January 19, 2018.

On July 17, 2018, GLTRR filed a request to amend the notice. According to GLTRR, the map provided with its notice incorrectly depicted the property on which the subject trackage is located. Thus, GLTRR requests that the Board substitute the map identified as Amended Appendix 1–B to its petition for the map submitted in the notice. This correction is recognized here. All remaining information from GLTRR's original filing and the notice published on January 5, 2018 remains unchanged.

Board decisions and notices are available on our website at *WWW.STB.GOV.*

Decided: August 24, 2018.

By the Board, Amy C. Ziehm, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–18859 Filed 8–29–18; 8:45 am]

BILLING CODE 4915–01–P

[1] GLTRR stated that the transaction described in the December 20, 2017, notice was its initial railroad acquisition.

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB18–28—7/30/18) for permission to use data from the Board's 2017 Masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB18–28.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–18841 Filed 8–29–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0063]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by letter dated July 11, 2018, Naugatuck Railroad Company (NAUG), the operator of trackage owned by the Connecticut Department of Transportation (CDOT) between Waterbury, CT, and Torrington, CT, known as the ''Torrington Secondary,'' petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 234. FRA assigned the petition Docket Number FRA–2018–0063.

NAUG seeks a waiver of compliance from the requirements of 49 CFR 234.247, *Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements.* Specifically, NAUG seeks relief to operate over two non-functioning highway-rail grade crossings without making inspections and tests required in §§ 234.249 through 234.271.

Previous owners and operators of this track allowed signals in Torrington, CT, to fall into disrepair at Albert Street, DOT #503956B, and Litchfield Street, DOT #503957B, both two-way, single traffic lane streets. One crossing has equipment over 60 years old, and the second, more complex crossing signal system, has equipment that is over 30 years old. As part of Petitioner's commitment to provide rail services to those that require them, the need to access areas of the railroad previously deemed out of service became necessary. In partnership with CDOT, through the CT Rail Freight Improvement Program, this track was rehabilitated to FRA Class 1 standards, but no grade crossing funding was available for these crossings. Petitioner requests relief to provide service to its customers and generate the revenue needed to continue to rehabilitate this segment of track.

In lieu of performing all required tests (and repairs identified by the required tests), Petitioner requests to continue limited operations over the two affected grade crossings by:

- Contacting local authorities to advise that a crossing may need to be occupied by a train.
- Stationing an employee at each crossing to provide warning to approaching highway traffic and communicate with motorists as needed, as provided in Northeast Operating Rules Advisory Committee ''stop and protect'' rules.

All other grade crossings in Torrington are ''stop and protect'' crossings on two-way, single traffic lane streets, with no automatic highway warning protective devices.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 15, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Safety, Chief Safety Officer.

[FR Doc. 2018–18808 Filed 8–29–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0050]

Pipeline Safety: Gas and Hazardous Liquid Pipeline Risk Models

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice and request for comments; extension of comment period.

SUMMARY: PHMSA published a notice in the **Federal Register** to seek public comments on a report developed to support improvements in gas and hazardous liquid pipeline risk models titled ''Pipeline Risk Modeling—Overview of Methods and Tools for Improved Implementation'' (Pipeline Risk Modeling Report). PHMSA has received a request to extend the comment period to allow stakeholders more time to evaluate the notice. PHMSA has concurred with this request and has extended the comment period for an additional 30 days.

DATES: The closing date for filing comments on the notice published August 16, 2018, (83 FR 40843) is extended from September 17, 2018, to October 17, 2018.

ADDRESSES: Comments should reference Docket No. PHMSA–2018–0050 and may be submitted in the following ways:

E-Gov Website: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2018–0050, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that 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.).

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2018–0050.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Note: Privacy Act Statement: DOT may solicit comments from the public regarding certain general notices. 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.*

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Steve Nanney, Project Manager, PHMSA, by telephone at 713–272–2855, or by email at *Steve.Nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: On August 16, 2018, (83 FR 40843) PHMSA published a notice to seek public comments on a report developed to support improvements in gas and hazardous liquid pipeline risk models. Based on the results of pipeline inspections and failure investigation findings, both PHMSA and the National Transportation Safety Board have identified general weaknesses in the risk models often used by pipeline operators in performing risk assessments for their integrity management programs. The Pipeline Risk Modeling Report considers the major types of pipeline risk models, and the effectiveness of each type in supporting risk assessments, as applied to pipeline operator decisions.

In an August 15, 2018, letter to PHMSA, the American Gas Association, the American Petroleum Institute, the American Public Gas Association, the Association of Oil Pipe Lines, and the Interstate Natural Gas Association of America requested a 30-day extension of the comment deadline to allow them and other interested stakeholders plan their review of the notice.

PHMSA has concurred with the Associations' request and has extended the comment period as shown in the **DATES** section of this notice. This extension will provide sufficient additional time for commenters to submit their comments.

Issued in Washington, DC, on August 24, 2018, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2018–18770 Filed 8–29–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Determinations Regarding Certain Nonbank Financial Companies

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995. The public is invited to submit comments on the collection(s) listed below.

DATES: Written comments must be received on or before October 29, 2018.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Randall Fasnacht by emailing *Randall.Fasnacht@treasury.gov,* calling (202) 622–2763, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Determinations Regarding Certain Nonbank Financial Companies.

OMB Control Number: 1505–0244.

Type of Review: Extension without change of a currently approved collection.

Abstract: Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''DFA'') (Pub. L. 111–203) provides the Financial Stability Oversight Council (the ''Council'') the authority to require that a nonbank financial company be supervised by the Board of Governors of the Federal Reserve System and be subject to prudential standards in accordance with Title I of the DFA if the Council determines that material financial distress at the firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the firm, could pose a threat to the financial stability of the United States. The information collected in § 1310.20 from state regulatory agencies will be used generally by FSOC to carry out its duties under Title I of the Dodd-Frank Act. The collections of information in §§ 1310.21 and 1310.22 provide an opportunity to request a hearing or submit written materials to the Council concerning whether, in the company's view, material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Hours per Response: 20.

Estimated Total Annual Burden Hours: 1,000.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: August 27, 2018.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2018–18862 Filed 8–29–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of modified system of records.

SUMMARY: As required by the Privacy Act of 1974, the Department of Veterans Affairs (VA) is giving notice that VA is fully republishing an update of the system of records entitled ''Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance—VA (36VA29)''

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to ''SORN (36VA29)''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Chief Privacy Officer, VA Insurance Service, Department of Veterans Affairs Insurance Center, 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842–2000, Ext. 2905.

SUPPLEMENTARY INFORMATION: The Department is republishing, in full, the System of Records Notice (SORN) 36VA29 that was last published on October 22, 2010. This republication provides a number of nonsignificant edits added for clarity and brevity, such as minor updates involving the locations and references of the mailing addresses for both onsite and offsite records storage sites, corrected office designations for VA Insurance Center's Director, amendment of website terminology that reflects more accurate nomenclature for access, and includes references to the amended title of the vendor that provides telecommunication services to the Veterans Insurance Phone Section (VIPS). This nonsignificant alteration also eliminates references to the amendments made in the revised and consolidated SORN 36VA29 of October 22, 2010.

This amendment also provides for a number of modifications for routine uses that include text changes and additions that are considered to be a significant amendment based on VA requirements. The following are the changes made to the routine uses for SORN 36VA29.

The language of routine use number one, which states, ''The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of, and at the written request of, the individual'', has been amended to state, ''VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.'' VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance. This change to routine use number one is not a new routine use but is amended to reflect the current language used for the release of information to members of Congress.

The language of former routine use number seven, which is now designated as routine use number two, reads, ''VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that, as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C 5727'', has been amended to read, ''VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''.

This change to former routine use number seven, which is now designated as routine use number two, is not a new routine use. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724.''

a. *Effective Response.* A Federal agency's ability to respond quickly and effectively, in the event of a breach of Federal data, is critical to its efforts to prevent or minimize any consequent

harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or by playing a role in preventing or minimizing harm from the breach.

b. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by Federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies shall publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts, in the event of a data breach.

The edits made to former routine use number seven, which is now designated as routine use number two, merely reflects the current language used for the release of information related to a data breach(es) and the related remedial efforts.

A new routine use, designated as routine use number three, has been added to address VA sharing information with another Federal agency or entity when data breach responses and remedial efforts with another Federal agency or entity are required because of a breach in this VA system. The disclosure is required because the breach may affect the other agency's responses and/or remedial efforts related to data breach. This routine use allows VA to work with another Federal agency in responding to and taking remedial actions in response to the breach.

The language of former routine use number five, which is now designated as routine use number four, states, ''VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.'' has been amended to State, ''VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.''

VA must be able to provide, on its own initiative, information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

This change to former routine use number five, which is now designated as routine use number four, is not a new routine use but is amended to reflect the current language used for the release of information to law enforcement authorities.

The language of former routine use number three, which now is designated as routine use number five, states, ''VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, prior to each disclosure, the agency also determines that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected them. VA, on its own initiative, may disclose records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected them.'', has been replaced with the following language that states, ''VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines, prior to disclosure, that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records, in this system of records, in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.''

To determine whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update,'' currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf.*

VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–85

(D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

This change to the former routine use number three, which is now routine use number five, is not a new routine use but is amended to reflect the current language used for the release of information to DoJ.

The language of former routine use number four, which is now routine use number six, that reads '' VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.'' has been amended to read, ''VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.''

This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency. This change to the former routine use number four, which is now routine use number six, is not a new routine use but is amended to reflect the current language used for the release of information to contractors.

New routine uses numbers seven, eight, and nine have been added to address disclosures to the Equal Employment Opportunity Commission (EEOC), the Federal Labor Relations Authority (FLRA), and the Merit Systems Protection Board (MSPB) to meet the language requirements of OMB regarding releases of information by Federal agencies.

The new routine use number seven, permits the release of information to the Equal Employment Opportunity Commission (EEOC) and will state, ''VA may disclose information from this system to the EEOC when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.''

VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

The new routine use number eight, permits the release of information to the Federal Labor Relations Authority (FLRA) and will state, ''VA may disclose information from this system to the FLRA, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Service Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.'' VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

The new routine use number nine, permits the release of information to the Merit Systems Protection Board (MSPB) and will state, ''VA may disclose information from this system to the MSPB, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.'' VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

The language of former routine use number two, which is now designated as routine use number ten, states ''Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under authority of title 44 U.S.C.'' will be changed to ''VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under title 44, U.S.C..'' This amendment does not change routine use. NARA is responsible for archiving old records, which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records. This change to the former routine use number two, which is now number ten, is not a new routine use but is amended to reflect the current language used to release information to NARA and GSA.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John Buck, Director of the Office of Privacy, Information and Identity Protection, Department of Veterans Affairs approved this document on June 5, 2018 for publication.

Dated: August 24, 2018.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy, Information and Identity Protection, Quality, Privacy and Risk, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER

''Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance—VA'' (36VA29)

SECURITY CLASSIFICATION:

Information in this SORN is not classified information.

SYSTEM LOCATION:

VA Insurance records are maintained as follows:

1. Active Insurance records are located at the VA Insurance Center (VAIC) in Philadelphia, Pennsylvania. (Appendix I at the end of this document provides the complete address.)

2. Inactive Insurance records are also located at the VAIC in Philadelphia, Pennsylvania. In addition, inactive records are stored at various servicing Federal archives and records centers in Northeast Philadelphia, Pennsylvania; Dayton, Ohio; Lee's Summit, Missouri;

Lenexa, Kansas; Chicago, Illinois; and Pittsfield, Massachusetts. (See Appendix I for the complete addresses.)

3. Some pre-1968 records pertaining to beneficiaries of deceased veterans are located in local VA regional offices, in claim folders.

4. Insurance file numbers, policies numbers, and folder locations are available to all VA regional offices through the Veterans Service Network (VETSNET).

5. Back up computerized insurance records and automated data, maintained by the Philadelphia Information Technology Center (Philadelphia ITC), the primary computer-processing center, are stored by St. Paul Regional Benefit Office in St. Paul, Minnesota, and by Iron Mountain in Itasca, Illinois. (See Appendix I for the complete addresses of each location.)

6. Records for the supervised programs of Government insurance are maintained by Prudential Insurance Company of America's Office of Servicemembers' Group Life Insurance (OSGLI) in Roseland, New Jersey. (See Appendix I for the address.)

SYSTEM MANAGER(S):

Official responsible for policies and procedures; Director, VA Insurance Center, 5000 Wissahickon Avenue, Director's Office (29), Philadelphia, PA 19144. The phone number is (215) 381–3029.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.), chapter 5, section 501; and chapter 3, including sections 303 and 315. Title 38 U.S.C., chapter 19; chapter 21; and section 2106. Title 5 U.S.C. 5514.

PURPOSE(S) OF THE SYSTEM:

VA gathers or creates these records to administer and supervise statutory Government life insurance programs for veterans, members of the uniformed services, and their spouses, surviving spouses, dependents, and beneficiaries who apply for them. See the statutory provisions cited in ''Authority for Maintenance of the System.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system:

1. Veterans (not including dependents) and members of the uniformed services (including dependents) who have applied for and/or have been issued Government life insurance.

2. Beneficiaries of Government life insurance entitled to or in receipt of insurance proceeds.

3. Attorneys drawing fees for helping to settle VA insurance claims.

The individuals noted above are covered by this system based on applications, claims, and notices of eligibility for the following Government life insurance programs provided in 38 U.S.C. chapters 19 and 21:

1. U.S. Government Life Insurance (USGLI) under section 1942.

2. National Service Life Insurance (NSLI) under section 1904.

3. Veterans' Special Life Insurance (VSLI) under section 1923.

4. Veterans' Reopened Insurance (VRI) under section 1925.

5. Service-Disabled Veterans' Insurance (S–DVI) under sections 1922 and 1922A.

6. Veterans' Mortgage Life Insurance (VMLI) under section 2106.

7. Servicemembers' Group Life Insurance (SGLI), including Family Servicemembers' Group Life Insurance (FSGLI), Veterans' Group Life Insurance (VGLI), and Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) under sections 1967 through 1980A.

CATEGORIES OF RECORDS IN THE SYSTEM:

Life insurance records (or information contained in records) may consist of:

1. Applications for insurance, including: (a) The name and address of the veteran or member of the uniformed services; (b) email address; (c) phone number; (d) correspondence to and from the veteran or member of the uniformed services or their legal representative; (d) date of birth; (e) social security number; (f) military service number; (g) dates of service; (h) military rank; (i) character of discharge; (j) VA file number; (k) plan or type of insurance; (l) disability rating; (m) medical information regarding disability and health history; (n) method of payment; (o) amount of insurance coverage requested; and (p) bank routing and account numbers.

2. Applications for Veterans' Mortgage Life Insurance (VMLI), including: (a) Supporting mortgage documents; (b) address of the mortgaged property; (c) name and address of the mortgagor; (d) the mortgage account number; (e) the rate of interest; (f) the original amount of the mortgage; (g) the current amount of the mortgage; (h) the monthly payment amount; (i) the mortgage payment period; and (j) VA Specially Adapted Grant Card (which contains the veteran's or uniformed services member's name, address, dates of military service, branch of service, method of separation, whether the veteran or member of the uniformed services has VMLI, the name and address of the lender, the legal description and property address, improvements to such property, date applied for disability compensation, date of submission of the initial application, grant information, amount of the grant approved, or whether the grant was denied or canceled).

3. Beneficiary and option designation information, including: (a) The names and addresses of principal and contingent beneficiaries; (b) beneficiary social security number; (c) share amount to each beneficiary; (d) the method of payment; and (e) the designated estate(s) and trust(s).

4. Insurance contract information, including: (a) Authorization of allotment payment; (b) authorization for deduction from VA benefit payments; (c) authorization for deduction from military retired pay; (d) authorization for deduction from employee payroll; (e) paid dividend information; (f) claims for disability or death payments; (g) cash value, policy loan, and lien information; (h) a listing of lapsed actions and unpaid insurance proceeds; (i) payment vouchers; (j) reinstatement information; (k) premium records status, and retired status of the policy; (l) court-martial orders; (m) copies of personal papers of the insured, including birth certificate, marriage license, divorce decree, citizen or naturalization papers, death certificate, adoption decree, and family support documents; (n) correspondence to and from the veteran, member of the uniformed services, legal representative, or payee; (o) employment information; (p) returned check and check tracer information; (q) court documents; and (r) insurance death claims settlement information, including indebtedness, interest, and other credits.

5. Records of checks withheld from delivery to certain foreign countries.

6. Index of payees, including: (a) Central Office (CO) index cards; and (b) premium record cards.

7. Disability Outreach Tracking System (DOTS) records stored in the Veterans Insurance Claims Tracking and Response System (VICTARS), including: (a) The veteran's or uniformed services member's name; (b) address; (c) phone number; (d) disability status; (e) social security number; (f) date of birth; and (g) list of dependents.

8. Policy information and access history from the VA Insurance website self-service-portal stored in VICTARS, which includes: (a) The name of the insured; (b) file number; (c) policy number; (d) address; (e) phone number; (f) email address; (g) loan status (including loan amount requested, denied, or pending); (h) the date of request for information; (i) loan history;

(j) policy changes; (k) dividend option changes; and (l) website pages accessed.

9. Information from the VA Insurance website which provides access to veterans for completion of an application for Service-Disabled Veterans Insurance (S–DVI), which includes: (a) The veteran's name; (b) address; (c) social security number; (d) date of birth; (e) phone number; (f) medical history; (g) email address; and (h) beneficiary information (such as the beneficiary's name, address, and social security number).

10. Recordings of incoming calls using software created by NICE Ltd. (hereafter referred to as NICE). Insurance personnel in the Veterans Insurance Phone Section (VIPS) receive these calls from veterans, members of the uniformed services, beneficiaries, personal representatives, members of Congress and their staff, other interested parties, and stakeholders. (The recordings are maintained for quality assurance and training purposes only.)

RECORD SOURCE CATEGORIES:

The veteran, member of the uniformed services, or someone acting on his/her behalf; the uniformed services, other Federal agencies, including the Department of Defense (DoD); Social Security Administration (SSA); U.S. Treasury Department; Office of Servicemembers' Group Life Insurance (OSGLI); State and local agencies; Federal, State, and local courts; VA records; VA and private physicians; VA and private medical facilities; accredited veterans service organizations and other organizations aiding veterans and members of the uniformed services; VA-approved claims agents; VA fiduciaries; court-appointed guardians/conservators, powers of attorney, and military trustees; financial institutions; beneficiaries; commercial insurance companies; undertakers; lending institutions holding a veteran's or uniformed services member's mortgage; VA Loan Guaranty; contractors remodeling, enlarging, or adding construction to existing homes; relatives and other interested persons; Westlaw and website-based research; Inquiry Routing & Information System (IRIS) (maintained under System of Records 151VA005OP6, by the Office of Information and Technology); and the general public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

6. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

7. VA may disclose information from this system to the EEOC when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

8. VA may disclose information from this system to the FLRA, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

9. VA may disclose information from this system to the MSPB, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

10. VA may disclose information from this system to NARA and GSA in records management inspections conducted under title 44, U.S.C.

11. Disclosure to other Federal agencies may be made to assist such

agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

12. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: the hiring, retention, or transfer of an employee; the issuance of a security clearance; the letting of a contract; or the issuance or continuance of a license, grant, or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the veteran's prior written consent.

13. Any information in this system may be disclosed to a State or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, transfer, or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance or continuance of a license, grant, or other benefit by that agency; provided, that if the information pertains to a veteran or member of the uniformed services, the name and/or address of the veteran or member of the uniformed services will not be disclosed unless the name and address is provided first by the requesting State or local agency.

14. Any information in this system may be disclosed to a Federal, State or local agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and personal or educational background, at the request of the veteran or member of the uniformed services, in order for VA to obtain information relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

15. Any information in this system may be disclosed to a Federal agency, except for the name and address of a veteran or member of the uniformed services, in order for VA to obtain information relevant to the issuance of a benefit under title 38 U.S.C. The name and address of a veteran or member of the uniformed services may be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to a VA inquiry.

16. Except for beneficiary and option designations, any information in this system, including the name and address of a veteran or member of the uniformed services, may be disclosed to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C. (such disclosures include computerized lists of names and addresses).

17. Except for medical information and beneficiary and option designations, any information including insurance contract information (*e.g.,* name, address, status of the account, dividends paid, cash value, and policy loans) may be disclosed at the request of a veteran or member of the uniformed services to an attorney acting under a declaration of representation, a VA-approved claims agent, an insurance agency, a trust officer, or to employees or members of an accredited service organization, so that these individuals or organizations can aid veterans or members of the uniformed services in the preparation, presentation, and prosecution of claims under the laws administered by VA. The name and address of a veteran or member of the uniformed services will not, however, be disclosed to these individuals under this routine use if the veteran or member of the uniformed services has not requested the assistance of an accredited service organization, claims agent, trust officer, or an attorney.

18. The name, address, insurance account information of an insured veteran or member of the uniformed services, their beneficiary(ies), legal representatives, or designated payee(s), and the amount of payment may be disclosed to the Treasury Department, upon its official request, in order for the Treasury Department to pay dividends, policy loans, cash surrenders, maturing endowments, insurance refunds, or to issue checks and perform check tracer activities for the veteran or member of the uniformed services, beneficiary(ies), legal representative, or designated payee(s).

19. The name and address of an insured veteran or member of the uniformed services, date and amount of payments made to VA, including specific status of each policy (*e.g.,* premiums paid, dividends issued, cash and loan values) may be disclosed to the Internal Revenue Service (IRS), upon its official request, in order for the IRS to collect tax liens by withholding insurance payments to satisfy unpaid taxes. This purpose is consistent with title 26 of the United States Code, section 7602.

20. The name, address, social security number, date of discharge from the military, medical information concerning the grounds for total disability or the nature of an injury or illness, and dependency- or beneficiary-related information of a member of the uniformed services or veteran may be disclosed to the Office of Servicemembers' Group Life Insurance (OSGLI) at the request of a member of the uniformed services or veteran in order to aid OSGLI in the verification of such information for the purpose of issuing and maintaining insurance policies provided to members of the uniformed services or veterans participating in the Servicemembers' Group Life Insurance (SGLI) and/or Veterans' Group Life Insurance (VGLI) programs, and to pay insurance benefits under these programs.

21. The name, address, and other identifying information, such as a social security number or a military service number, may be disclosed to the Department of Defense (Army, Air Force, Navy, and Marine Corps); the Coast Guard of the Department of Homeland Security; the Commissioned Officers Corps of the U.S. Public Health Service; and the Commissioned Officers Corps of the National Oceanic and Atmospheric Administration of the Department of Commerce, upon their official request to help establish and maintain allotments from active and retired service pay for VA insurance premiums and loan repayments.

22. The face amount and cash and/or loan value of an insurance policy, verification of an existing insurance policy, and the name and address of an insured veteran or member of the uniformed services, may be disclosed at the request of the veteran or member of the uniformed services to a Federal, State, or local agency, in order for these agencies to assist a veteran or member of the uniformed services applying for Medicaid, Medicare, nursing home admittance, welfare benefits, or other benefits provided by the requesting agency to the extent that the information is relevant and necessary to the agency's decision regarding those benefits.

23. The name and address of a veteran or member of the uniformed services and military service information (*e.g.,* dates of service, branch of service) may be disclosed to the Armed Forces Institute of Pathology (AFIP), upon its official request, in order for the AFIP to conduct research for specified official purposes.

24. The name(s) and address(es) of a veteran or member of the uniformed services may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency, for the purpose of conducting Government research necessary to accomplish a statutory purpose of that agency.

25. Any information in this system, including the nature and amount of a financial obligation, may be disclosed to a debtor's employing agency or commanding officer, upon its official request, as a routine use in order to assist VA in the collection of unpaid financial obligations owed to VA so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514; 31 U.S.C. 3701–3702 and sections 3711–3718.

26. Any information in this system, including available identifying data regarding the debtor, such as the name of the debtor, last known address of the debtor, name of the debtor's spouse, social security number of the debtor, VA insurance number, VA loan number, VA file number, place of birth, date of birth of the debtor, name and address of the debtor's employer or firm, and dates of employment, may be disclosed to other Federal agencies, State probate courts, State drivers' license bureaus, and State automobile title and license bureaus as a routine use in order to obtain current address and credit report assistance for the collection of unpaid financial obligations owed the United States. This purpose is consistent with the Federal Claims Collection Act of 1966 (Pub. L. 89–508), subsequent amendments, and 31 U.S.C. 3701–3702 and 3711–3718.

27. Any information concerning the veteran's or uniformed services member's indebtedness to the United States by virtue of a person's participation in a benefits program administered by VA, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States. Purposes of these disclosures may be to (a) assist VA in collection of title 38 benefit overpayments, overdue indebtedness, and/or costs of services provided individuals not entitled to such services, and (b) initiate legal actions for prosecuting individuals who willfully or fraudulently obtain title 38 benefits without entitlement. This disclosure is consistent with 31 U.S.C. 3701–3702, 3711–3718; and 38 U.S.C. 5701(b)(6).

28. The name and address of a veteran or member of the uniformed services, other information as is reasonably necessary to identify such veteran or member of the uniformed services, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's or uniformed services member's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA, may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 31 U.S.C. 3701–3702 and 3711–3718 and 38 U.S.C 5701(g)(4) have been met.

29. Any information in this system, such as notices of renewal, reinstatements, premiums due, lapsed actions, miscellaneous insurance instructions, disposition of dividends, policy loans, and transfer of records, may be disclosed to VA fiduciaries, court-appointed guardians/conservators, powers of attorney, or military trustees of incompetent veterans or members of the uniformed services, in order to advise VA fiduciaries, court-appointed guardians/conservators, powers of attorney, or military trustees of current actions to be taken in connection with ownership of U.S. Government life insurance policies and to enable them to properly perform their duties as fiduciaries or guardians, powers of attorney, or military trustees.

30. Any information in this system of records may be disclosed, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

31. Identifying information, except for the name and address of a veteran or member of the uniformed services, may be disclosed to a Federal, State, county, or municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a veteran or member of the uniformed services who is receiving, or has received, Government insurance benefits under title 38 of the United States Code. The name and address of a veteran or member of the uniformed services may also be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in two computerized systems called Veterans Insurance Claims Tracking and Response System (VICTARS), and the Insurance Terminal System (ITS). VICTARS utilizes imaging and electronic technology to store paper documents, including applications and correspondence, and it records all processing-related activities involving insurance policies, disability outreach services, and the website self-service portal.

ITS provides direct access to insurance records relative to claims processing via computer monitors. Both VICTARS and ITS store and retrieve all information in the insurance records system through the local area network (LAN) maintained through the Philadelphia ITC at the Philadelphia Insurance Center.

NICE creates recordings of incoming phone calls received by insurance personnel regarding policy-related issues and stores the calls as part of the LAN maintained through the Philadelphia ITC.

Back-up VA insurance records are stored in secured areas by the St. Paul Regional Benefit Office and Iron Mountain. (Appendix I provides the complete addresses for each location.)

Inactive records are also stored on microfilm, microfiche, compact disks, CO index cards, premium record cards in hardcopy folders, computer lists, and punch cards, which are kept in locked files and secured areas.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

All hardcopy and electronically stored insurance records are retrievable by the Government insurance file number, VA file number, policyholder's name, and social security number.

Information input through the VA Insurance website's self-service portal relative to loan applications is retrievable by the use of unique personal identification numbers (PINs), passwords, and insurance file numbers. Approved encryption technology is used to protect personal information.

Incomplete S–DVI applications are retrievable on the VA Insurance's secure website through the use of personal passwords, social security numbers, and dates of birth of the veterans. (The completed S–DVI application becomes part of the VICTARS storage system.) Approved encryption technology is used to protect personal information.

The Interactive Voice Response (IVR) permits veterans to access audible information about their insurance records, which is stored by VA Insurance's LAN via touch-tone telephone technology utilizing VA Insurance file numbers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Hardcopy records are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

VICTARS, the primary records storage and retrieval system for the Insurance

program, maintains imaged insurance records indefinitely through the VA Insurance LAN. Hardcopy records imaged into VICTARS are stored for 31 days prior to destruction. Original copies of imaged beneficiary designation documents are stored indefinitely at the NARA Mid-Atlantic Regional Center. (See Appendix I for the complete address.) Computerized records accessible through ITS are also maintained indefinitely through the VA Insurance LAN. Back-up Philadelphia ITC archive records are stored on tape for one year prior to being erased or over written.

NICE recordings, which document incoming phone calls regarding insurance policies, are maintained for a minimum of 13 months after the call and are purged thereafter.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Physical Security.

a. All VA facilities are protected by the Federal Protective Service or other security personnel. All Insurance files and processing areas are restricted to authorized personnel on a need-to-know basis. Areas containing paper and computerized records are protected by a sprinkler system. Paper records pertaining to employees and public figures, or otherwise sensitive files, are stored in locked files. Microfilm records and compact disk (CD) back-up files of the payment processing unit (Collections) activities are stored in locked, fireproof, humidity-controlled vaults at the Insurance Center.

b. Access to the Philadelphia ITC and Collections is secured by electronic locking devices and is restricted to Philadelphia ITC and Collections employees, custodial personnel, and Federal Protective Service or other security personnel. All other persons gaining access to computer rooms and Collections are escorted by an individual with authorized access.

c. Access to records at the Insurance Center through computerized storage systems, including VICTARS, ITS, NICE, and the Philadelphia ITC, is protected by passwords, magnetic card readers, and audible alarms. Electronic keyboard locks are activated upon security errors. Video surveillance is also provided in secured processing and computer protected areas, such as Claims, Collections, and the ITC. An Information Security Officer is assigned responsibility for privacy-security measures, including review of violations logs and local control and distribution of passwords.

2. System Security.

a. In the Philadelphia ITC, automated labeling techniques identify computerized tapes and disks containing data. Access to computer programs is controlled at the operations level.

b. VICTARS, ITS, and NICE utilize the Insurance Center's LAN as the storage and retrieval conduit, which uses passwords to provide automated recognition of authorized users, their respective access levels, and restrictions. Passwords are changed periodically and are restricted to authorized individuals on a need-to-know basis for system access or security purposes.

c. Back-up insurance records and Philadelphia ITC data are stored in a secured site by the St. Paul Regional Benefit Office and by Iron Mountain.

d. The VA Insurance website self-service portal, which is used by veterans, their legal representatives, and payees, is only accessible with the use of personal identifiers consisting of PINs, passwords, file numbers, loan numbers, social security numbers, and dates of birth. The access portals utilize LAN-based encryption technology and firewalls to protect personal data.

e. The IVR, which is protected as part of the LAN, permits veterans to listen to information from their insurance records via touch-tone telephones, which utilize VA Insurance file numbers to access the records.

f. Data exchange by email within the agency or between other Federal agencies is done by means of dedicated communication lines utilizing approved encryption technology.

RECORD ACCESS PROCEDURE:

Individuals desiring access to, or wishing to contest, VA records and related procedures should write to the VA Insurance Center at 5000 Wissahickon Avenue, Director's Office (29), Philadelphia, Pennsylvania 19144.

CONTESTING RECORD PROCEDURES:

(See Records Access Procedures above.)

NOTIFICATION PROCEDURES:

Any individual who wishes to determine whether a record is maintained in this system under his or her name or other personal identifier, who wants to determine the contents of such record, or has a routine inquiry concerning the status of his or her insurance under this system, may contact the VA Insurance Center in Philadelphia, Pennsylvania at (215) 381–3029. Requests concerning the specific content of a record must be made in writing or made in person at the VA Insurance Center in Philadelphia. The inquirer should provide the full name of the veteran or member of the uniformed services; the insurance file number, VA claim number, or social security number; the date of birth of the veteran or member of the uniformed services; and reasonably identify the benefit or system of records involved. If the insurance file number or any of the other identifiers noted above are not available, requestors should provide the service number, and/or location of insurance records that will aid VA personnel in locating the official insurance records. (See Appendix I for the addresses of records storage facilities.)

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance–VA (36VA29), published at 75 FR 65405, October 22, 2010, was the last full publication of the VA Insurance Center's SORN 36VA29 which provided updated information regarding VAIC records and consolidated the outdated SORNs 36VA00, 46VA00, and 53VA00 into one SORN.

Appendix I: Addresses of VA Insurance Records Facilities

1. VA Insurance Center, 5000 Wissahickon Avenue, Philadelphia, PA 19144
2. St. Paul Regional Benefit Office, 1 Federal Drive, Fort Snelling, St. Paul, MN 55111–4050
3. Iron Mountain, 1397 Glenlake Avenue, Itasca, IL 60143
4. NARA Mid-Atlantic Region (Northeast Philadelphia), 14700 Townsend Road, Philadelphia, PA 19154
5. NARA Great Lakes Region (Dayton Kingsridge), 8801 Kingsridge Drive, Dayton, OH 45458
6. NARA Central Plains Region (Lee's Summit), 200 Space Center Drive, Lee's Summit, MO 64064
7. NARA Central Plains Region (Lenexa), 17501 West 98th Street, Suite 3150, Lenexa, KS 66219
8. NARA Great Lakes Region (Chicago), 7358 South Pulaski Road, Chicago, IL 60629
9. NARA Northeast Region (Pittsfield), 10 Conte Drive, Pittsfield, MA 01201
10. Office of Servicemembers' Group Life Insurance, 80 Livingston Avenue, Roseland, NJ 07068

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Part II

Federal Communications Commission

47 CFR Parts 1, 2, 15, et al.
Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 25, 30, and 101

[AU Docket No. 18–85; FCC 18–109]

Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: This document summarizes procedures, upfront payment amounts, minimum opening bids, dates and deadlines for the upcoming auctions of Upper Microwave Flexible Use Service (UMFUS) licenses in the 28 GHz and 24 GHz bands. The *Auctions 101 and 102 Procedures Public Notice* summarized here is intended to familiarize applicants with the procedures and other requirements governing participation in Auctions 101 and 102, and provides an overview of the post-auction application and payment processes.

DATES: Applications to participate in Auctions 101 and 102 must be submitted by 6:00 p.m. Eastern Time (ET) on September 18, 2018. Upfront payments for Auction 101 must be received by 6:00 p.m. ET on October 23, 2018. Bidding in Auction 101 is scheduled to begin on November 14, 2018.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau,* Auctions and Spectrum Access Division: For auction legal questions: Erik Beith or Kathryn Hinton at (202) 418–0660; for general auction questions: Auctions Hotline at (717) 338–2868; *Wireless Telecommunications Bureau, Broadband Division:* For Upper Microwave Flexible Use Service licensing and service rule questions: Nancy Zaczek at (202) 418–2487 or Tim Hilfiger at (717) 338–2578.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice (*Auctions 101 and 102 Procedures Public Notice*), AU Docket No. 18–85, adopted on August 2, 2018, and released on August 3, 2018, and a Public Notice announcing an updated list of licenses for Auction 102, released on August 9, 2018. The complete text of the *Auctions 101 and 102 Procedures Public Notice* and the subsequent August 9th Public Notice, including all attachments and any related documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's website at: *https://www.fcc.gov/auction/101* and *https://www.fcc.gov/auction/102.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. General Information

A. Introduction

1. By the *Auctions 101 and 102 Procedures Public Notice,* the Commission established procedures for the upcoming auctions of 5,984 Upper Microwave Flexible Use Service (UMFUS) licenses in the 27.5–28.35 GHz (28 GHz) and 24.25–24.45 and 24.75–25.25 GHz (24 GHz) bands (collectively, the UMFUS bands).

2. The bidding in the auction for licenses in the 28 GHz band, which is designated as Auction 101, is scheduled to commence on November 14, 2018. Bidding in the auction for licenses in the 24 GHz band, which is designated as Auction 102, will be scheduled to commence after the conclusion of bidding in Auction 101. The *Auctions 101 and 102 Procedures Public Notice* provides details regarding the procedures, terms, and conditions, as well as dates and deadlines, governing participation in Auctions 101 and 102, and an overview of the post-auction application and payment processes.

B. Background and Relevant Authority

3. Prospective applicants should familiarize themselves with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective applicants should also familiarize themselves with the Commission's UMFUS service and competitive bidding requirements contained in part 30 of the Commission's rules, as well as Commission orders concerning competitive bidding for UMFUS licenses. Applicants must also be thoroughly familiar with the procedures, terms, and conditions contained in the *Auctions 101 and 102 Procedures Public Notice* and any future public notices that may be released in proceeding 18–85.

4. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auctions 101 and 102. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the Commission's FCC Auctions internet site at *www.fcc.gov/auctions/.* Additionally, documents are available at the Commission's headquarters, located at 445 12th Street SW, Washington, DC 20554, during normal business hours.

C. Description of Licenses To Be Offered in Auctions 101 and 102

5. The Commission will proceed to the assignment of 28 GHz licenses in Auction 101 and the assignment of 24 GHz licenses in Auction 102. Doing so will make 1.55 gigahertz of UMFUS spectrum available in Auctions 101 and 102, licensed on a geographic area basis. The 3,072 licenses in the 28 GHz band offered in Auction 101 will be county-based licenses. There is a total of 3,232 counties. The 28 GHz county licenses that the Commission is making available in Auction 101 are defined by 1990 boundaries. The 28 GHz band will be licensed as two 425-megahertz blocks (27.500–27.925 GHz and 27.925–28.350 GHz). For each county in which 28 GHz licenses will be available for auction, both blocks of the 28 GHz band will be available.

6. Auction 102 will offer 2,912 licenses in the 24 GHz band, and the licenses will be based on PEAs. There is a total of 416 PEAs. The lower segment of the 24 GHz band (24.25–24.45 GHz) will be licensed as two 100-megahertz blocks, while the upper segment (24.75–25.25 GHz) will be licensed as five 100-megahertz blocks. In one PEA, one 75-megahertz block will be licensed in the upper segment.

7. Each of the bands available in Auctions 101 and 102 will be licensed on an unpaired basis. A licensee in these bands may provide any services permitted under a fixed or mobile allocation, as set forth in the non-Federal Government column of the Table of Frequency Allocations in § 2.106 of the Commission's rules.

8. Summaries of the licenses to be offered in Auctions 101 and 102 are available on the Commission's FCC Auctions internet site. The 28 GHz licenses available in Auction 101 do not

include counties within the boundaries of existing active 28 GHz licenses. The complete list of licenses to be offered in these auctions is provided in electronic format only, available as separate Attachment A files for each auction at *www.fcc.gov/auction/101* and *www.fcc.gov/auction/102,* respectively.

9. Active licenses in the 28 GHz band cover 1,696 full counties and one partial county. In Anchorage County, Alaska, part of the county is encumbered, and the other part will be offered in Auction 101. That county is noted with a double asterisk in Attachment A. The Commission notes that it has updated the list of licenses available in Auction 101 to reflect that the previously partitioned portion of Horry County is now part of license WPOH936 and held by Horry Telephone Cooperative, Inc.

10. The list of licenses to be offered in the 24 GHz band has been updated subsequent to the release of the *Auctions 101 and 102 Procedures Public Notice* to adjust the categories and number of generic blocks that will be available in Auction 102.

11. Specifically, on August 9, 2018, an updated list of licenses was made available which indicates that for Auction 102, in one PEA, one of the blocks in the upper 24 GHz band will have reduced bandwidth (75 megahertz). That block will be offered in an additional category, for a total of three categories of blocks in that PEA. That PEA is noted with an asterisk in the Attachment A file. In three other PEAs, one fewer block will be available in the upper 24 GHz band. Accordingly, the clock phase of Auction 102 will allow bidding for two generic 100-megahertz blocks in the lower 24 GHz segment (Category L) in every PEA and five generic 100-megahertz blocks in the upper 24 GHz segment (Category U) in most PEAs (*i.e.,* those without an incumbent licensee). In three PEAs, four 100-megahertz Category U blocks will be available instead of five. In one other PEA, four 100-megahertz Category U blocks will be available plus one 75-megahertz block in the upper 24 GHz segment (Category UI). Additional information is available in the Attachment A file on the Auction 102 website.

D. Auction Specifics

1. Separate Auction Application and Bidding Processes

12. The Commission will offer the 5,984 licenses through two separate auctions, Auctions 101 and 102, respectively. Bidding in Auction 101 for 28 GHz band licenses is scheduled to commence on November 14, 2018. Bidding will commence in Auction 102 for 24 GHz band licenses after the close of bidding in Auction 101.

13. The Commission also will use separate application and bidding processes for Auctions 101 and 102. In addition, the Commission will accept auction applications during separate application filing windows—one for Auction 101 and one for Auction 102. The Commission will use its standard simultaneous multiple-round (SMR) auction format for Auction 101 (28 GHz) and a clock auction format, similar to that used for the forward auction portion (Auction 1002) of the Broadcast Incentive Auction, for Auction 102 (24 GHz).

14. The filing window for Auction 102 will run concurrently with the filing window for Auction 101.

15. The Commission's rules regarding certain application requirements and certifications (*e.g.,* joint bidding agreements relating to the licenses subject to auction), the rule prohibiting certain communications, and the Commission's procedures regarding information available during the auction process will apply across both auctions. An applicant seeking to participate in both auctions must submit an application in each auction. The same applicant, filing two applications, one in each auction, is a single applicant for purposes of the rule prohibiting certain communications. Accordingly, that applicant's internal communications regarding the two auctions are not covered by the prohibition.

16. The Commission notes that, while it is applying its limited information disclosure procedures across both auctions, certain bidding information is publicly available during the bidding process, including, for each license offered in Auction 101: The amount of every bid placed, the number of bidders that placed a bid, and whether a bid was withdrawn after each round. At the end of Auction 101 (*i.e.,* after the last round of Auction 101), potential bidders in Auction 102 will have access to the public results data from each round of Auction 101, including the gross winning bid amounts. The Commission will defer the acceptance of upfront payments for Auction 102 until after the close of Auction 101. The deadline for submitting upfront payments for Auction 102 will occur before the start of bidding in Auction 102, and will be announced in a later public notice. The Commission also will apply its bidding credit cap separately to each auction. The Commission anticipates that the bidding for Auction 102 will start no earlier than four weeks after the release of a public notice announcing the closing of Auction 101.

2. Auction Title and Start Date

17. The auction of licenses in the 28 GHz band will be referred to as Auction 101–28 GHz Band. Bidding in Auction 101 will begin on Wednesday, November 14, 2018. The initial schedule for bidding rounds in Auction 101 will be announced by public notice at least one week before bidding in the auction starts. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

18. The auction of licenses in the 24 GHz band will be referred to as Auction 102–24 GHz Band. The clock phase of Auction 102 will begin no sooner than four weeks after the release of a public notice announcing the closing of Auction 101. Unless otherwise announced, bidding on all generic spectrum blocks in all PEAs will be conducted on each business day until bidding has stopped on all spectrum blocks in all PEAs. Following the conclusion of the clock phase, the Auction System will make available more detailed information about the assignment phase to the winning clock phase bidders not less than five business days before starting the assignment phase. Winning bidders from the clock phase will be given scheduling information and bidding options for the assignment phase in the Auction System.

3. Auction Dates and Deadlines

19. The following dates and deadlines apply to Auction 101:

Auction Application Tutorial Available (via internet)—August 28, 2018
Short-Form Application (FCC Form 175) Filing Window Opens—September 5, 2018; 12:00 noon ET
Short-Form Application (FCC Form 175) Filing Window Deadline—September 18, 2018; 6:00 p.m. ET
Upfront Payments (via wire transfer)—October 23, 2018; 6:00 p.m. ET
Bidding Tutorial Available (via internet)—No later than November 1, 2018
Mock Auction—November 8, 2018
Bidding Begins in Auction 101—November 14, 2018

20. The following dates and deadlines apply to Auction 102:

Auction Application Tutorial Available (via internet)—August 28, 2018
Short-Form Application (FCC Form 175) Filing Window Opens—September 5, 2018; 12:00 noon ET
Short-Form Application (FCC Form 175) Filing Window Deadline—September

18, 2018; 6:00 p.m. ET

21. The remainder of the pre-auction dates and deadlines for Auction 102 will be announced in a later public notice to be released by the Bureau after the close of bidding in Auction 101. That public notice will announce when the bidding tutorial will become available, the upfront payment deadline, the date of the clock and assignment phase mock auction, and when bidding will begin in the clock phase of Auction 102.

4. Requirements for Participation

22. Those wishing to participate in Auction 101 and/or Auction 102 must:

- Submit a separate short-form application (FCC Form 175) electronically for each auction in which they seek to participate prior to 6:00 p.m. ET on September 18, 2018, following the electronic filing procedures set forth in the FCC Form 175 Instructions. Detailed instructions for submitting an FCC Form 175 for Auction 101 and Auction 102 (FCC Form 175 Instructions) can be accessed at *www.fcc.gov/auction/101* and *www.fcc.gov/auction/102/.*
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) for the particular auction by 6:00 p.m. ET on the applicable deadline, following the procedures and instructions set forth in the FCC Form 159 Instructions. Detailed instructions for submitting an FCC Form 159 for Auction 101 (FCC Form 159 Instructions) can be accessed at *www.fcc.gov/auction/101/.* The Bureau will prepare and release after the close of bidding in Auction 101 detailed instructions for submitting an FCC Form 159 for Auction 102.
  - For Auction 101, the deadline for submitting upfront payments and FCC Form 159 is 6:00 p.m. ET on October 23, 2018.
  - For Auction 102, the deadline for submitting upfront payments and FCC Form 159 will be announced in a later public notice.
- Comply with all provisions outlined in the *Auctions 101 and 102 Procedures Public Notice* and applicable Commission rules.

II. Applying To Participate in Auctions 101 and 102

A. General Information Regarding Short-Form Applications

23. An application to participate in Auction 101 or Auction 102, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical, and financial qualifications to participate in a Commission auction for spectrum licenses. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, a party seeking to participate in Auction 101 and/or Auction 102 must file a separate short-form application for each auction in which it seeks to participate, in which it certifies, under penalty of perjury, its qualifications. Eligibility to participate in Auction 101 and/or Auction 102 is based on an applicant's short-form application(s) and certifications and on the applicant's submission of a sufficient upfront payment for the auction(s). In the second phase of the process, each winning bidder must file a more comprehensive post-auction, long-form application (FCC Form 601) for the licenses it wins in each auction, and it must have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission. The Commission reminds applicants that being deemed qualified to bid in Auction 101 or Auction 102 does not constitute a determination that a party is qualified to hold a Commission license or is eligible for a designated entity bidding credit.

24. A party seeking to participate in Auction 101 and/or Auction 102 must file a separate FCC Form 175 electronically for each auction in which it wishes to participate via the Auction Application System prior to 6:00 p.m. ET on September 18, 2018, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 as of the filing date will be used to determine whether the applicant may request the claimed bidding credit. An applicant that files an FCC Form 175 for Auction 101 and/or Auction 102 will be subject to the Commission's rule prohibiting certain communications. The prohibition of certain communications will apply across both auctions (*i.e.,* will apply to any applicant in either Auction 101 or 102). An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6:00 p.m. ET on September 18, 2018. The prohibition will end for applicants in both auctions on the post-auction down payment deadline for Auction 102.

25. An applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Each applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and it must confirm that it is legally, technically, financially, and otherwise qualified to hold a license. If an Auction 101 or Auction 102 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.

26. An applicant should note that submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their FCC Form 175 applications after the filing deadline. A change in the required certifications is considered a major change and would therefore not be permitted. Submitting a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

27. Applicants are cautioned that because the required information submitted in FCC Form 175 bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted. The Commission has held generally that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information. The Commission has specifically held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.

28. With respect to a particular auction (*i.e.,* Auction 101 or Auction 102), the same party may not bid based on more than one auction application, *i.e.,* as more than one applicant. Therefore, a party may not submit more than one short-form application for Auction 101 or for Auction 102. A party that wishes to participate in both Auctions 101 and 102 must file a separate auction application for each auction—one for Auction 101 and one for Auction 102. That same party, however, may not file more than one short-form application for a particular auction (*e.g.,* may not file two short-form applications for Auction 101). If a

party submits multiple short-form applications for either auction, only one application may be the basis for that party to become qualified to bid in that auction.

29. A party is generally permitted to participate in a Commission auction only through a single bidding entity. The filing of applications in a single auction (*i.e.,* either Auction 101 or Auction 102) by multiple entities controlled by the same individual or set of individuals will generally not be permitted. This restriction applies across all applications in each auction (*i.e.,* Auction 101 or Auction 102), without regard to the licenses or geographic areas selected. The Commission adopted a limited exception to the general prohibition on the filing of multiple applications by commonly-controlled entities for qualified rural wireless partnerships and individual members of such partnerships. Under this limited exception, each qualifying rural wireless partnership and its individual members will be permitted to participate separately in an auction. The filing of applications in both auctions (*i.e.,* one application for Auction 101 *and* one application for Auction 102) by entities controlled by the same individual or set of individuals will generally only be permitted if the two applicants are identical (*i.e.,* the same entity applies as an applicant in both auctions).

30. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auctions 101 and 102 to determine whether each application complies with the application requirements and whether it has provided all required information concerning the applicant's qualifications for bidding. After this review is completed for a particular auction, a public notice will be released announcing the status of applications for that auction and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. That public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies. The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (*i.e.,* have timely corrected any identified deficiencies) and make a timely and sufficient upfront payment. Qualified bidders for each auction will be identified by public notice at least 10 days prior to the respective mock auction.

31. An applicant should consult the Commission's rules to ensure that all required information is included in its short-form application. To the extent the information in the *Auctions 101 and 102 Procedures Public Notice* does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for Auctions 101 and 102 and/or use the contact information provided in the *Auctions 101 and 102 Procedures Public Notice* to consult with Commission staff to better understand the information it must submit in its short-form application.

B. Authorized Bidders

32. An applicant must designate at least one individual as an authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant. For Auctions 101 and 102, the same individual may not be listed as an authorized bidder in more than one FCC Form 175 submitted for a particular auction. An applicant may not use an individual as an authorized bidder in one auction, if that individual is identified as an authorized bidder in the other, unless the two applicants are identical. In other words, an individual may be listed as an authorized bidder in an application filed in Auction 101 and in another application filed in Auction 102 only if both applications are filed by the same entity.

C. License or License Area Selection

33. An applicant must select all of the licenses (Auction 101) or license areas (Auction 102) on which it may want to bid from the list of available licenses or PEAs on its FCC Form 175 for the appropriate auction. Under the Commission's adopted SMR auction design for Auction 101, an applicant will identify on its auction application the licenses offered on which it may wish to bid during the auction. Under the Commission's adopted clock auction design for Auction 102, an applicant will select on its auction application all of the PEA(s) on which it may want to bid from the list of available PEAs. An applicant must carefully review and verify its license or PEA selections, as applicable, before the FCC Form 175 filing deadline because those selections cannot be changed after the auction application filing deadline. The auction system will not accept bids on licenses or generic blocks in PEAs that were not selected on the applicant's FCC Form 175.

D. Disclosure of Agreements and Bidding Arrangements

34. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. A controlling interest includes all individuals or entities with positive or negative de jure or de facto control of the licensee. The applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreements, arrangements, or understandings into which it has entered. An applicant may continue negotiating, discussing, or communicating with respect to a new agreement after the FCC Form 175 filing deadline, provided that the communications involved do not relate both to the licenses being auctioned and to bids or bidding strategies or post-auction market structure. An auction applicant that enters into any agreement relating to the licenses being auctioned during an auction is subject to the same disclosure obligations it would be for agreements existing at the FCC Form 175 filing deadline, and it must maintain the accuracy and completeness of the information in its pending auction application.

35. If parties agree in principle on all material terms prior to the application filing deadline, each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175, even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the FCC Form 175 filing deadline, they should not describe, or include the names of parties to, the discussions on their applications.

36. The Commission's rules now generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by, such applicants). Joint bidding arrangements include arrangements relating to the

licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangements relating to the post-auction market structure. The Commission notes that application of this prohibition requires a case-by-case determination based on the details of a specific arrangement. The Commission directs the Bureau to make such determinations expeditiously.

37. This prohibition applies to joint bidding arrangements involving two or more nationwide providers, as well as joint bidding arrangements involving a nationwide provider and one or more non-nationwide providers, where any party to the arrangement is an applicant for the auction. A non-nationwide provider refers to any provider of communications services that is not a nationwide provider. Non-nationwide providers may enter into agreements to form a consortium or a joint venture (as applicable) that result in a single party applying to participate in an auction. While two or more non-nationwide providers may participate in an auction through a joint venture, a nationwide and a non-nationwide provider may not do so. A designated entity (DE) can participate in only one consortium or joint venture in an auction, which shall be the exclusive bidding vehicle for its members in that auction, and non-nationwide providers that are not designated entities may participate in an auction through only one joint venture, which also shall be the exclusive bidding vehicle for its members in that auction. A consortium is an entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities that individually are eligible to claim the same designated entity benefits under § 1.2110 of the Commission's rules, provided that no member of the consortium may be a nationwide provider. A joint venture means a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities, provided that no member of the joint venture may be a nationwide provider. The general prohibition on joint bidding arrangements excludes certain agreements, including those that are solely operational in nature. Agreements that are solely operational in nature are those that address operational aspects of providing a mobile service, such as agreements for roaming, spectrum leasing and other spectrum use arrangements, or device acquisition, as well as agreements for assignment or transfer of licenses, provided that any such agreement does not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid) or post-auction market structure.

38. The Commission's rules require each auction applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party. The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant or a nationwide provider.

39. The Commission has identified AT&T, Sprint, T-Mobile, and Verizon Wireless as nationwide providers for the purpose of implementing its competitive bidding rules in Auctions 101 and 102. The Commission will apply the rule prohibiting joint bidding arrangements to any applicant for Auction 101 or Auction 102. The rule prohibiting joint bidding arrangements will apply to all applicants (including any party that controls or is controlled by, such applicants) to participate in either auction, and not just to applicants for the same auction. A party wishing to participate in either auction will be required to disclose in its short-form application any bidding arrangements or understandings of any kind relating to the licenses being offered in either Auction 101 or Auction 102. The Commission will apply the agreement disclosure requirement and prohibition against joint bidding agreements such that the licenses being auctioned and licenses at auction include all of the licenses being offered in Auctions 101 and 102.

40. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175, the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

41. Applicants should bear in mind that a winning bidder will be required to disclose in its FCC Form 601 post-auction application the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed. This applies to any bidding consortium, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the licenses being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

E. Ownership Disclosure Requirements

42. Each applicant must comply with the applicable part 1 ownership disclosure requirements and provide information required by §§ 1.2105 and 1.2112, and, where applicable, § 1.2110, of the Commission's rules. In completing FCC Form 175, an applicant must fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in §§ 1.2105 and 1.2112, and, where applicable, § 1.2110, of the Commission's rules. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

43. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. The most current ownership information contained in any FCC Form 602 or previous auction application on file with the Commission that used the same FRN the applicant is using to submit its FCC Form 175 will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175, if such information is in an electronic format compatible with FCC Form 175. The FCC Form 175 instructions provide additional details on pre-filled information. Applicants are encouraged to submit an FCC Form 602 ownership report or update any ownership information on file with the Commission in an FCC Form 602 ownership report prior to starting an application for Auction 101 or Auction 102 to ensure that their most recent

ownership information is pre-filled into their short-form applications and, for applicants seeking to participate in both Auctions 101 and 102, to reduce the number of changes that need to be made in both applications. Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

F. Foreign Ownership Disclosure Requirements

44. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing the FCC Form 175, an applicant will be required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in section 310(b), it may seek to participate in Auction 101 and/or Auction 102 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline. An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in a particular auction, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission. Additional information concerning foreign ownership disclosure is provided in the FCC Form 175 Filing Instructions.

G. Information Procedures During the Auction Process

45. The Commission will limit information available in Auctions 101 and 102. The Commission will not make public until after bidding in both auctions has closed: (1) The licenses or PEAs that an applicant selects for bidding in its FCC Form 175, (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 101 or Auction 102, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

46. Information to be made public after each round of bidding in Auction 101 will include, for each license, the number of bidders that placed a bid on the license, the amount of every bid placed, whether a bid was withdrawn, the minimum acceptable bid amount for the next round, and whether the license has a provisionally winning bid. The Auction System will indicate whether any proactive waivers were submitted in each round and the stage transition percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. After the last round in Auction 101, the Commission will also make public the gross winning bid amount for each license. In Auction 102, information to be made public after each round of bidding in the clock phase will include, for each category of license in each geographic area, the supply, the aggregate demand, the price at the end of the last completed round, and the price for the next round.

47. Any information relating to either auction that is non-public under the Commission's limited information procedures will remain non-public until after bidding has closed in both auctions.

48. The Commission will make non-public information relating to Auctions 101 and 102, including the results of the respective auctions, available only after the close of bidding in Auction 102. Bidders' license and/or PEA selections, as applicable, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions concerning Auctions 101 and 102 will be made publicly available after the close of bidding in Auction 102. The Commission retains the discretion not to use limited information procedures if the Bureau, after examining the level of potential competition based on the short-form applications filed for Auction 101 and Auction 102, determines that the circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. The identities of bidders placing specific bids or withdrawals (as applicable) and the net bid amounts (reflecting bidding credits) for Auctions 101 and 102 will not be disclosed until after the close of bidding in Auction 102. Bidders will have access to additional information related to their own bidding and bid eligibility. For example, bidders will be able to view their own level of eligibility, before and during each respective auction, through the FCC auction bidding system.

49. The Commission warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information (*e.g.,* bid withdrawals, proactive waivers submitted, reductions in eligibility, identities of bidders) could violate the Commission's rule prohibiting certain communications. To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the SEC, the Commission strongly urges that the applicant consult with the Commission staff in the Auctions and Spectrum Access Division before making such disclosure.

H. Prohibited Communications and Compliance With Antitrust Laws

50. The rules prohibiting certain communications set forth in § 1.2105(c) apply to each applicant that files a short-form application (FCC Form 175) in Auction 101 or Auction 102. Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

51. The Commission will apply its rule prohibiting certain communications across both auctions, using the Auction 102 down payment deadline to determine when the prohibition ends for applicants in either auction. The rule prohibiting certain communications will apply to communications between every applicant to participate in either auction regarding any such applicant's bids or bidding strategies relating to either auction.

1. Entities Subject to § 1.2105(c)

52. An applicant for purposes of this rule includes all controlling interests in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10 percent or more of the entity, and all officers and directors of that entity. A

party that submits an application for either auction becomes an applicant for both auctions under the rule at the application deadline, and that status does not change based on later developments. An auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an applicant for purposes of the rule and remains subject to the prohibition on certain communications until the Auction 102 down payment deadline.

2. Prohibition Applies Until Down Payment Deadline

53. Section 1.2105(c)'s prohibition on certain communications begins at an auction's short-form application filing deadline and ends at the auction's down payment deadline after the auction closes, which will be announced in a future public notice.

54. The Commission will use Auction 102's post-auction down payment deadline to determine when the prohibition ends for applicants in either auction. The prohibition on certain communications for applicants in either Auction 101 or Auction 102 will begin at the short-form application filing deadline for both auctions and will end at the down payment deadline for Auction 102.

3. Scope of Prohibition on Communications; Prohibition on Joint Bidding Agreements

55. The Commission in 2015 amended § 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area, or market. In addition, the rule now applies to communications by applicants with non-applicant nationwide providers of communications services and by nationwide applicants with non-applicant non-nationwide providers. The Commission now prohibits a joint bidding arrangement, including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure. The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. Applicants may continue to communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for the transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on their applications and do not both relate to the licenses at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

56. The prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant. The Commission reminds applicants that they must determine whether their communications with other parties are permissible under the rule once the prohibition begins at the deadline for submitting applications, even before the public notice identifying the applicants is released.

57. Parties subject to § 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.

58. Section 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. A communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties.

59. Business discussions and negotiations that are unrelated to bidding in Auction 101 or Auction 102 and that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant in either auction, are not prohibited by the rule. Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 101 or Auction 102 will not violate the rule. In contrast, communicating, among other things, how a party will participate, including specific geographic areas selected, specific bid amounts, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.

60. Each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

61. The Commission cautions applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. The Commission has found a violation of the rule against prohibited communications when an applicant used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

62. When completing a short-form application, each applicant should avoid any statements or disclosures that may violate § 1.2105(c). An applicant should avoid including any information in its short-form application that might convey information regarding its license or PEA selection, as applicable, such as referring to certain licenses or markets in describing agreements, including any information in application attachments

that will be publicly available that may otherwise disclose the applicant's license or PEA selections, or using applicant names that refer to licenses being offered.

63. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate § 1.2105(c) even though that information subsequently may be made public during later periods of the application or bidding processes.

4. Communicating With Third Parties

64. Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third-party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.

65. In the case of an individual, the objective precautionary measure of a firewall is not available. An individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. The Commission emphasizes that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

66. The Commission's rules prohibit separate applicants for each auction (*i.e.,* within one auction) or separate applicants for either auction (*e.g.,* one applicant for Auction 101 and another for Auction 102) from designating the same individual on their short-form applications to serve as an authorized bidder. A violation of the rules could also occur if the authorized bidders are different individuals employed by the same organization (*e.g.,* a law firm, engineering firm, or consulting firm). In the latter case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that the applicant and its bidders will comply with § 1.2105(c). The Commission cautions that filing a certifying statement that precautionary steps have been taken will not outweigh specific evidence of an actual violation.

67. The Commission reminds potential applicants that they may discuss the short-form application or bids for specific licenses or license areas with the counsel, consultant, or expert of their choice before the short-form application deadline. The same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including licenses or PEAs selected on the short-form application, is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the short-form deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.

68. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a § 1.2105 violation. Similarly, an applicant's public statement of intent not to place bids during bidding in Auction 101 or Auction 102 could also violate the rule.

5. Section 1.2105(c) Certifications

69. By electronically submitting its FCC Form 175 auction application, each applicant for Auction 101 and Auction 102 certifies its compliance with § 1.2105(c) of the rules. If an applicant has a non-controlling interest with respect to more than one application, the applicant must certify that it has established internal control procedures to preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

6. Duty To Report Prohibited Communications

70. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate § 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

7. Procedures for Reporting Prohibited Communications

71. A party reporting any information or communication pursuant to §§ 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of § 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other parties specified under the rule through the use of Commission filing procedures that allow such materials to be made available for public inspection.

72. Parties must file only a single report concerning a prohibited communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions. This process differs from filing procedures used in connection with other Commission rules and processes, which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants. Any reports required by § 1.2105(c) must be filed consistent with

the instructions set forth in the *Auctions 101 and 102 Procedures Public Notice.* For Auctions 101 and 102, such reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener sent to both *auction101@fcc.gov* and *auction102@fcc.gov.* If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW, Room 6–C217, Washington, DC 20554.

73. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in § 0.459 of the Commission's rules. Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with Request for Confidential Treatment Attached or Not for Public Inspection. Any such request must cover all the material to which the request applies. The Commission encourages such parties to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

8. Winning Bidders Must Disclose Terms of Agreements

74. Each applicant that is a winning bidder will be required to provide as part of its long-form application any agreement or arrangement it has entered into and a summary of the specific terms, conditions, and parties involved in any agreement it has entered into. Such agreements must have been entered into prior to the filing of short-form applications. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

9. Additional Information Concerning Prohibition of Certain Communications in Commission Auctions

75. A summary listing of documents issued by the Commission and the Bureau addressing the application of § 1.2105(c) is available on the Commission's auction web page at *https://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications/.*

10. Antitrust Laws

76. Compliance with the disclosure requirements of § 1.2105(c)(4) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.

77. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to a forfeiture and may be prohibited from participating further in Auction 101, Auction 102, and in future auctions, among other sanctions.

I. Provisions for Small Businesses and Rural Service Providers

78. The Commission's designated entity rules apply to all licenses acquired with bidding credits, including those won in Auctions 101 and 102. A bidding credit represents an amount by which a bidder's winning bid will be discounted. Applicants should note that all references to a winning bid in the context of designated entity bidding credits for Auction 102 (*e.g.,* the application of a small business discount to an applicant's winning bid) refer to the calculated license price. A disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a 10 percent or greater interest of any kind in the applicant, including but not limited to, a 10 percent or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee.

79. In Auctions 101 and 102, bidding credits will be available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). Bidding credits will not be cumulative—for each auction, an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both. Each applicant must also certify that it is eligible for the claimed bidding credit in its FCC Form 175. Each applicant should review carefully the Commission's decisions regarding the designated entity provisions as well as the part 1 rules.

80. The Commission reminds applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission's rules and implementing orders regarding de jure and de facto control of such applicants. These rules include a prohibition, which applies to all applicants (whether or not seeking bidding credits), against changes in ownership of the applicant that would constitute an assignment or transfer of control. Any substantial change in ownership or control is classified as a major amendment. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements.

1. Small Business Bidding Credit

81. For Auctions 101 and 102, bidding credits will be available to eligible small businesses and consortia thereof. Under the service rules applicable to the UMFUS licenses to be offered in Auctions 101 and 102, the level of bidding credit available is determined as follows:

- A bidder with attributed average annual gross revenues that do not exceed $55 million for the preceding three years is eligible to receive a 15 percent discount on its winning bid.
- A bidder with attributed average annual gross revenues that do not exceed $20 million for the preceding three years is eligible to receive a 25 percent discount on its winning bid.

82. Small business bidding credits are not cumulative; for each auction, an eligible applicant may receive either the

15 percent or the 25 percent bidding credit on its winning bid, but not both. The Commission's unjust enrichment provisions also apply to a winning bidder that uses a bidding credit and subsequently seeks to assign or transfer control of its license within a certain period to an entity not qualifying for the same level of small business bidding credit. For example, the Commission's unjust enrichment provisions would not apply to a winning bidder that uses the 15 percent small business bidding credit and seeks to transfer control of its license to an entity that qualifies for either the 15 percent small business bidding credit or the rural service provider bidding credit. The provisions would apply if that same winning bidder uses the 25 percent small business bidding credit, unless the proposed transferee also qualifies for the 25 percent small business bidding credit.

83. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding three years for each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that be may won by the applicant in Auction 101 or Auction 102, as applicable. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25 percent of the spectrum capacity of any license that may be won in Auction 101 or Auction 102, the identity and the attributable gross revenues of any such disclosable interest holder must be disclosed. This attribution rule will be applied on a license-by-license basis. As a result, an applicant may be eligible for a bidding credit on some, but not all, of the licenses for which it is bidding in Auction 101 or Auction 102. If an applicant is applying as a consortium of small businesses, the disclosures described in this paragraph must be provided for each consortium member.

2. Rural Service Provider Bidding Credit

84. An eligible applicant may request a 15 percent discount on its winning bid using a rural service provider bidding credit, subject to a $10 million cap. The Commission determines eligibility for bidding credits, including the rural service provider bidding credit, on a service-by-service basis. To be eligible for a rural service provider bidding credit, an applicant must: (1) Be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas, defined as counties with a population density of 100 or fewer persons per square mile. The Commission has not adopted a specific threshold for the proportion of an applicant's customers who are located in rural areas, in order for an applicant to be eligible for a rural service provider bidding credit, the primary focus of its business activity must be the provision of services to rural areas. These eligibility requirements must be satisfied by the FCC Form 175 filing deadline. Additionally, an applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service. For instance, a subscriber receiving both wireline and telephone service and broadband would be counted as a single subscriber.

85. Each applicant seeking a rural service provider bidding credit must disclose the number of subscribers it has, along with the number of subscribers of its affiliates, controlling interests, and the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that be may won by the applicant in Auction 101 or Auction 102, as applicable. To the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25 percent of the spectrum capacity of any license that may be won in Auction 101 or Auction 102, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed. Eligible rural service providers may also form a consortium. If an applicant is applying as a consortium of rural service providers, the disclosures described in this paragraph, including the certification, must be provided for each consortium member.

3. Caps on Bidding Credits

86. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to certain caps on the total amount of bidding credits that any eligible applicant may receive. The Commission adopts a $25 million cap on the total amount of bidding credits that may be awarded to an eligible small business in Auction 101 and Auction 102 (*i.e.,* $25 million in each auction). The Commission adopts a $10 million cap on the total amount of bidding credits that may be awarded to an eligible rural service provider in Auction 101 and Auction 102 (*i.e.,* $10 million in each auction). An entity is not eligible for a rural service provider bidding credit if it has already claimed a small business bidding credit. No winning designated entity bidder will be able to obtain more than $10 million in bidding credits in total for licenses won in markets with a population of 500,000 or less. To the extent an applicant seeking a small business bidding credit does not claim the full $10 million in bidding credits in those smaller markets, it may apply the remaining balance to its winning bids on licenses in larger markets, up to the aggregate $25 million cap.

4. Attributable Interests

a. Controlling Interests and Affiliates

87. An applicant's eligibility for designated entity benefits is determined by attributing the gross revenues (for those seeking small business benefits) or subscribers (for those seeking rural service provider benefits) of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Controlling interests of an applicant include individuals and entities with either de facto or de jure control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences de jure control. De facto control is determined on a case-by-case basis based on the totality of the circumstances. The following are some common indicia of de facto control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee;
- the entity plays an integral role in management decisions.

88. Applicants should refer to § 1.2110(c)(2) of the Commission's rules and the FCC Form 175 Instructions to understand how certain interests are calculated in determining control for purposes of attributing gross revenues. For example, officers and directors of an applicant are considered to have a controlling interest in the applicant.

89. Affiliates of an applicant or controlling interest include an individual or entity that (1) directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by

a third party that also controls or has the power to control the applicant, or (4) has an identity of interest with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information on the application requirements regarding controlling interests and affiliates, applicants should refer to § 1.2110(c)(2) and (5) respectively, as well as the FCC Form 175 Instructions.

90. An applicant seeking a small business bidding credit must demonstrate its eligibility for the bidding credit by: (1) Meeting the applicable small business size standard, based on the controlling interest and affiliation rules, and (2) retaining control, on a license-by-license basis, over the spectrum associated with the licenses for which it seeks small business benefits. Applicants should note that control and affiliation may arise through, among other things, ownership interests, voting interests, management and other operating agreements, or the terms of any other types of agreements—including spectrum lease agreements—that independently or together create a controlling, or potentially controlling, interest in the applicant's or licensee's business as a whole. Except under the limited provisions provided for spectrum manager lessors, the Commission's decision to discontinue its policy requiring designated entity licensees to operate as primarily facilities-based providers of service directly to the public does not alter the rules that require the Commission to consider whether any particular use agreement may confer control of or create affiliation with the applicant. Once an applicant demonstrates eligibility as a small business under the first prong, it must also be eligible for benefits on a license-by-license basis under the second prong. As part of making the FCC Form 175 certification that it is qualified as a designated entity under § 1.2110, an applicant is certifying that it does not have any spectrum use or other agreements that would confer de jure and de facto control of any license it seeks to acquire with bidding credits. For instance, if an applicant has a spectrum use agreement on a particular license that calls into question whether, under the Commission's affiliation rules, the user's revenues should be attributed to the applicant for that particular license, rather than for its overall business operations, the applicant could be ineligible to acquire or retain benefits with respect to that particular license. An applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits.

91. Applicants should note that if an applicant executes a spectrum use agreement that does not comply with the Commission's relevant standard of de facto control, it will be subject to unjust enrichment obligations for the benefits associated with that particular license, as well as the penalties associated with any violation of section 310(d) of the Communications Act and related regulations, which require Commission approval of transfers of control. Although in this scenario the applicant may not be eligible for a bidding credit and may be subject to the Commission's unjust enrichment rules, the applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits. If that spectrum use agreement (either alone or in combination with the designated entity controlling interest and attribution rules), goes so far as to confer control of the applicant's overall business, the gross revenues of the additional interest holders will be attributed to the applicant, which could render the applicant ineligible for all current and future small business benefits on all licenses. The Commission applies the same de facto control standard to designated entity spectrum manager lessors that is applied to non-designated entity spectrum manager lessors.

b. Limitation on Spectrum Use

92. The Commission determined that a new attribution rule will apply going forward under which the gross revenues (or the subscribers, in the case of a rural service provider) of an applicant's disclosable interest holder are attributable to the applicant, on a license-by-license basis, if the disclosable interest holder has an agreement with the applicant to use, in any manner, more than 25 percent of the spectrum capacity of any license won by the applicant and acquired with a bidding credit during the five-year unjust enrichment period for the applicable license. A disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a ten percent or greater interest of any kind in the applicant, including but not limited to, a ten percent or greater interest in any class of stock, warrants, options or debt securities in the applicant or licensee. Any applicant seeking a bidding credit for licenses won in Auction 101 or Auction 102 will be subject to this attribution rule and must make the requisite disclosures.

93. The Commission also determined that certain disclosable interest holders may be excluded from this attribution rule. An applicant claiming the rural service provider bidding credit may have spectrum license use agreements with a disclosable interest holder, without having to attribute the disclosable interest holder's subscribers, so long as the disclosable interest holder is independently eligible for a rural service provider credit and the use agreement is otherwise permissible under the Commission's existing rules. If applicable, the applicant must attach to its FCC Form 175 any additional information as may be required to indicate any license (or license area) that may be subject to this attribution rule or to demonstrate its eligibility for the exception from this attribution rule. To the extent an Auction 101 or Auction 102 applicant is required to submit any such additional information, the applicant must not disclose details of its submission to others as it would reveal information regarding its license or PEA selection(s), respectively. The Commission intends to withhold from public disclosure all information contained in any such attachments until after the close of Auction 102.

c. Exceptions From Attribution Rules for Small Businesses and Rural Service Providers

94. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules. For example, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. If an officer or director operates a separate business, the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. The Commission also exempts from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in § 1.2110(b)(4)(iii) of the Commission's rules are met. An applicant claiming this exemption must

provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of § 1.2110(b)(4)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.

95. An applicant claiming a rural service provider bidding credit may be eligible for an exception from the Commission's attribution rules as an existing rural partnership. To qualify for this exception, an applicant must be a rural partnership providing service as of July 16, 2015, and each member of the rural partnership must individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers. The Commission will evaluate eligibility for an existing rural wireless partnership on the same basis as it would for an applicant applying for a bidding credit as a consortium of rural service providers. A partnership that includes a nationwide provider as a member will not be eligible for the benefit. Members of such partnerships that fall under this exception may also apply as individual applicants or members of a consortium (to the extent that it is otherwise permissible to do so under the Commission's rules) and seek eligibility for a rural service provider bidding credit.

96. A consortium of small businesses or rural service providers may seek an exception from the Commission's attribution rules. A consortium of small businesses or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of small business or rural service provider. A consortium must provide additional information for each member demonstrating each member's eligibility for the claimed bidding credit in order to show that the applicant satisfies the eligibility criteria for the bidding credit. The gross revenue or subscriber information of each consortium member will not be aggregated for purposes of determining the consortium's eligibility for the claimed bidding credit. This information must be provided to ensure that each consortium member qualifies for the bidding credit sought by the consortium.

J. Tribal Lands Bidding Credit

97. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in §§ 1.2107 and 1.2110(f) of the Commission's rules. A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

98. A winning bidder applies for a tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application. When initially filing the post-auction application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in a particular auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the winning bidder will have 180 days from the close of the applicable post-auction application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in § 1.2110(f)(3)(vii). For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices. Relevant documents can be viewed on the Commission's website by going to *www.fcc.gov/auctions/* and clicking on the Tribal Lands Credits link.

K. Provisions Regarding Former and Current Defaulters

99. Each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 101 or Auction 102, but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is fifty percent more than would otherwise be necessary. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. Non-tax debt owed to any Federal agency includes all amounts owed under Federal programs, including contributions to the Universal Service Fund, Telecommunications Relay Services Fund, and the North American Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal agency under the Debt Collection Improvement Act of 1996. For example, an applicant with a past due USF contribution as of the auction application filing deadline would be disqualified from participating in Auctions 101 and 102 under the Commission's rules. If the applicant cures the overdue debt prior to the auction application filing deadline (and such debt does not fall within one of the exclusions described in § 1.2105(a)(2)(xii)), it may be eligible to participate in Auctions 101 and 102 as a former defaulter. Each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to certain exclusions. The term controlling interest is defined in § 1.2105(a)(4)(i) of the Commission rules.

100. An applicant is considered a former defaulter or a former delinquent when, as of the FCC Form 175 deadline, the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. The applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than $100,000; (3) the default or delinquency was paid within two quarters (*i.e.,* six months) after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon

resolution of the proceeding. Notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency. The date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice. A debt will not be deemed to be in default or delinquent until after the expiration of a final payment deadline. To the extent that the rules providing for payment of a specific federal debt permit payment after an original payment deadline accompanied by late fee(s), such debts would not be in default or delinquent for purposes of applying the former defaulter rules until after the late payment deadline. Any winning bidder that fails timely to pay its post-auction down payment or the balance of its final winning bid amount(s) or is disqualified for any reason after the close of an auction will be in default and subject to a default payment. Commission staff provide individual notice of the amount of such a default payment as well as procedures and information required by the Debt Collection Improvement Act of 1996, including the payment due date and any charges, interest, and/or penalties that accrue in the event of delinquency. Such notice provided by Commission staff assessing a default payment arising out of a default on a winning bid constitutes notice of the final payment deadline with respect to a default on a Commission license.

101. In addition to the *Auctions 101 and 102 Procedures Public Notice,* applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. Parties are also encouraged to consult with the Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

102. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. The Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of §§ 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

103. The Commission reminds each applicant that its Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of § 1.2105. While the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). A prospective applicant in Auctions 101 and/or 102 should note that any long-form applications filed after the close of bidding in the respective auction will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c). The Commission strongly encourages each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency. To access the Commission's Red Light Display System, go to: *https://apps.fcc.gov/redlight/login.cfm/.*

L. Optional Applicant Status Identification

104. Applicants owned by members of minority groups and/or women, as defined in § 1.2110(c)(3), and rural telephone companies, as defined in § 1.2110(c)(4), may identify themselves regarding this status in filling out their FCC Form 175 applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

M. Modifications to FCC Form 175

1. Only Minor Modifications Allowed

105. After the initial FCC Form 175 filing deadline, an Auction 101 and/or Auction 102 applicant will be permitted to make only minor changes to its application(s) consistent with the Commission's rules. Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three); the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person; and change in the applicant's selected bidding option (electronic or telephonic). Major modification to an FCC Form 175 (*e.g.,* change of license or PEA selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline. If an amendment reporting changes is a major amendment, as described in § 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application. Any change in control of an applicant will be considered a major modification, and the application will consequently be dismissed. The Commission reiterates that, even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.2105(c) until the down-payment deadline for Auction 102, which will be established after Auction 102 closes.

2. Duty To Maintain Accuracy and Completeness of FCC Form 175

106. Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 101 or Auction 102. An applicant's FCC Form 175 and associated attachments for a particular auction will remain pending until the release of a public notice announcing the close of that auction. The Commission reminds Auction 101 and Auction 102 applicants that they remain subject to the § 1.2105(c) prohibition of certain communications until the post-auction deadline for making down

payments on winning bids in Auction 102. An applicant's post-auction application (FCC Form 601) is considered pending from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court. An applicant for Auction 101 or Auction 102 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. An applicant is obligated to amend its pending application(s) even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

3. Modifying an FCC Form 175

107. A party seeking to participate in Auction 101 and/or Auction 102 must file an FCC Form 175 electronically for each auction via the FCC's Auction Application System. During the initial filing window for both auctions, an applicant will be able to make any necessary modifications to its respective FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date. The Commission strongly advises applicants to retain a copy of this confirmation page.

108. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields, during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. An applicant will not be allowed to modify electronically in the Auction Application System the applicant's legal classification, the applicant's name, or the certifying official. During these times, if an applicant needs to make permissible minor changes to its FCC Form 175, or must make changes in order to maintain the accuracy and completeness of its application pursuant to §§ 1.65 and 1.2105(b)(4), it must make the change(s) in the Auction Application System and then re-certify and re-submit its application to confirm and effect the change(s).

109. An applicant's ability to modify its FCC Form 175 in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window appropriate for each auction and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, contact information (*e.g.,* name, address, telephone number, etc.), and bidding preference (telephonic or electronic) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application, the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to *auction101@fcc.gov* for Auction 101 and *auction102@fcc.gov* for Auction 102. The email summarizing the changes must include a subject line referring to Auction 101 or Auction 102, as appropriate, and the name of the applicant, for example, Re: Changes to Auction 101 Auction Application of XYZ Corp. Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

110. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (*e.g.,* correcting a misstatement of the applicant's legal classification). If an applicant needs to make a permissible minor change of this nature, it must submit a written request by email to *auction101@fcc.gov* for Auction 101, and *auction102@fcc.gov* for Auction 102, requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s).

111. Any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

112. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate § 1.2105(c) or the limited information procedures adopted for Auctions 101 and 102. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's license or PEA selection(s), upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications.

113. Questions about FCC Form 175 amendments should be directed to the Auctions and Spectrum Access Division at (202) 418–0660.

III. Preparing for Bidding in Auctions 101 And 102

A. Due Diligence

114. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in Auction 101 and/or Auction 102. The Commission makes no representations or warranties about the use of this spectrum or these licenses for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any

particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

115. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Commission strongly encourages each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 101 or Auction 102 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Commission strongly encourages each applicant to inspect any prospective sites for communications facilities located in, or near, the geographic area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

116. The Commission also strongly encourages each applicant in Auction 101 and Auction 102 to continue to conduct its own research throughout the applicable auction(s) in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction(s). Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in an auction. The due diligence considerations mentioned in the *Auctions 101 and 102 Procedures Public Notice* do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 101 or Auction 102. The burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

117. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auctions 101 and 102. Each potential bidder is responsible for undertaking research to ensure that any licenses won in these auctions will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

118. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third-party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

B. Licensing Considerations

1. Incumbency and Sharing Issues

119. Potential applicants in Auctions 101 and 102 should consider carefully the operations of incumbent licensees in the 28 GHz and 24 GHz bands when developing business plans, assessing market conditions, and evaluating the availability of equipment for mmW services. Active licenses in the 28 GHz band cover 1,696 full counties and one partial county; active licenses in the 24 GHz band currently cover nine PEAs and are the subject of pending applications for license modification. Detailed information about existing incumbent licenses is available publicly in the Universal Licensing System (ULS) through interactive searches (*http://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp*) and database downloads (*http://wireless.fcc.gov/uls/index.htm?job=transaction&page=weekly*). Incumbent licenses can be identified by searching for active, regular licenses within the UU radio service in the 27500–28350 MHz band. Incumbent licenses in the 24 GHz band can be identified by searching for active, regular licenses within the TZ radio service. Incumbent licenses are contained in the ''Market Based Services'' download file.

120. In addition to incumbent licensees, potential applicants in Auctions 101 and 102 should consider carefully the implications of the Commission's sharing schemes for the 28 GHz and 24 GHz bands. In the *2018 Spectrum Frontiers Order,* the Commission decided to license FSS earth stations in the 24.75–25.25 GHz band on a co-primary basis under the provisions in § 25.136(d). This means that the 24.75–25.25 GHz band would be available only for individually licensed FSS earth stations that meet specific requirements adopted in the *2018 Spectrum Frontiers Order,* 83 FR 34478, July 20, 2018, (*e.g.,* limitations on population covered, number of earth station locations in a PEA, and a prohibition on earth stations in places where they would preclude terrestrial service to people or equipment that are in transit or are present at mass gatherings).

121. Accordingly, the Commission calls particular attention in Auctions 101 and 102 to the incumbency and spectrum-sharing issues concerning the 28 GHz and 24 GHz bands, respectively. Each applicant should follow closely releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the UMFUS bands.

2. International Coordination

122. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the upper microwave frequencies they acquire in Auction 101 and/or Auction 102 are subject to international agreements with Canada and Mexico. The Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. Until such time as any adjusted agreements, as needed, between the United States, Mexico and/or Canada can be agreed to, operations in the upper microwave bands must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

3. Quiet Zones

123. Upper microwave licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.

4. Environmental Review Requirements

124. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility under certain circumstances may be considered a federal action, and where it is, the licensee must comply with the Commission's environmental rules for each such facility. Where applicable, these environmental rules require, among other things, that the licensee (i) consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of

Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains); (ii) assess the effect of facility construction on historic properties by following the provisions of the Commission's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process; and (iii) prepare an environmental assessment for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, designated critical habitats, historical or archaeological sites, Native American religious sites, floodplains (if the facility cannot be elevated above the base flood elevation), surface features, or migratory birds; or that includes high intensity white lights in residential neighborhoods or excessive radio frequency emission.

5. Mobile Spectrum Holdings Policies

125. The Commission reminds bidders of the Commission's mobile spectrum holding policies applicable to the mmW bands. For purposes of reviewing proposed secondary market transactions, the Commission adopted in the *2017 Spectrum Frontiers Order,* 83 FR 37, January 2, 2018, a threshold of 1850 megahertz of combined mmW spectrum in the 24 GHz, 28 GHz, 37 GHZ, 39 GHz, and 47 GHz bands. In the *2018 Spectrum Frontiers Order,* the Commission eliminated the pre-auction limit of 1250 megahertz that had been adopted for the 28 GHz, 37 GHz, and 39 GHz bands, consistent with the Commission's conclusion not to adopt a pre-auction limit for the 24 GHz and 47 GHz bands. Further, the Commission will conduct an *ex post* case-by-case review of the acquisition through auction of spectrum in the UMFUS bands. The Commission found that it is in the public interest to review applications for initial licenses filed post-auction on a case-by-case basis using the same 1850 megahertz threshold it uses for reviewing applications for secondary market transactions.

C. Bidder Education

126. Before the opening of the concurrent short-form filing windows for Auctions 101 and 102 on September 5, 2018, detailed educational information will be provided in various formats to would-be participants on the Auction 101 and Auction 102 web pages, respectively.

127. The Commission has directed the Bureau to provide various materials on the pre-auction processes in advance of the opening of the concurrent short-form application windows for Auctions 101 and 102, beginning with the release of step-by-step instructions for completing the FCC Form 175. In addition, the Bureau will provide an online application procedures tutorial for the auctions covering information on pre-auction preparation, completing short-form applications, and the application review process.

128. The Bureau will provide separate educational materials on the bidding processes for Auction 101 and Auction 102 in advance of the start of each mock auction, beginning with release of a user guide for each bidding system, followed by online bidding procedures tutorials for the respective auctions.

129. The online tutorials will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorials will be accessible on the ''Education'' tab of the Auction 101 and Auction 102 websites at *www.fcc.gov/auction/101* and *www.fcc.gov/auction/102,* respectively. Once posted, the tutorials will be accessible anytime.

D. Short-Form Applications: Due Before 6:00 p.m. ET on September 18, 2018

130. In order to be eligible to bid in Auction 101 or Auction 102, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) for the relevant auction electronically via the Auction Application System, following the instructions set forth in the FCC Form 175 Instructions. The short-form application for each auction will become available with the opening of the initial filing window and must be submitted prior to 6:00 p.m. ET on September 18, 2018. Late applications will not be accepted. No application fee is required.

131. Applications may be filed for Auction 101 and/or Auction 102 at any time beginning at noon ET on September 5, 2018, until the respective filing window closes at 6:00 p.m. ET on September 18, 2018. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline for each auction on September 18, 2018.

132. An applicant must always click on the CERTIFY & SUBMIT button on the ''Certify & Submit'' screen to successfully submit its FCC Form 175 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is provided in the FCC Form 175 Instructions. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

133. The Commission cautions applicants that it periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the auction application system. However, there are occasions when auction-related systems may be temporarily unavailable.

E. Application Processing and Minor Modifications

1. Public Notice of Applicant's Initial Application Status and Opportunity for Minor Modifications

134. After the deadline for filing auction applications, the Commission will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. With respect to each auction, the Bureau will issue a public notice with applicants' initial application status identifying (1) those that are complete and (2) those that are incomplete or deficient because of defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications and a paper copy will be sent to the contact address listed in the FCC Form 175 for each applicant by overnight delivery. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Commission staff member who can answer questions specific to the application.

135. After the initial application filing deadline on September 18, 2018, applicants can make only minor

modifications to their applications. Major modifications (*e.g.,* change of license or PEA selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted. After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 101 or Auction 102.

136. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf. Authorizations may be sent by email to *auction101@fcc.gov* for Auction 101 and *auction102@fcc.gov* for Auction 102.

2. Public Notice of Applicant's Final Application Status After Upfront Payment Deadline

137. After Commission staff review resubmitted applications for a particular auction, the Bureau will release a public notice identifying applicants that have become qualified bidders for that auction. For each auction, a *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed and complete.

F. Upfront Payments

138. In order to be eligible to bid in Auction 101 or Auction 102, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted for each auction before 6:00 p.m. ET on the applicable deadline. Since the upfront payments for Auctions 101 and 102 will be deposited and managed in separate accounts in the U.S. Treasury for each auction, an applicant interested in applying for both auctions will be required to make a separate upfront payment for each auction into the appropriate account. After completing its short-form application, an applicant will have access to an electronic pre-filled version of the FCC Form 159. An accurate and complete FCC Form 159 must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. Detailed instructions for completing FCC Form 159 for Auction 101 were made available by the Bureau on August, 6, 2018, and can be accessed at *www.fcc.gov/auction/101.* The Bureau will prepare and release after the close of Auction 101 detailed instructions for submitting an FCC Form 159 for Auction 102.

139. For Auction 101, the deadline for submitting an upfront payment and FCC Form 159 is October 23, 2018. The *Auctions 101 and 102 Procedures Public Notice* describes the procedures for submitting an upfront payment for Auction 101. The Bureau will announce the deadline and procedures for the submission of upfront payments for Auction 102 by public notice after bidding in Auction 101 concludes. Under this approach, an Auction 102 applicant that participated in Auction 101 could take into account the licenses it won in Auction 101 when determining the amount of its upfront payment for Auction 102.

1. Making Upfront Payments by Wire Transfer for Auction 101

140. Upfront payments for Auction 101 must be wired to, and will be deposited in, the U.S. Treasury. Wire transfer payments for Auction 101 must be received before 6:00 p.m. ET on October 23, 2018, but no sooner than October 1, 2018. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the proper account at the U.S. Treasury. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Paragraph 147 of the *Auctions 101 and 102 Procedures Public Notice* lists the information needed to place an order for a wire transfer for Auction 101.

141. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 (Revised 2/03) to the FCC at (202) 418–2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to *RROGWireFaxes@fcc.gov.* On the fax cover sheet or in the email subject header, write ''Wire Transfer—Auction Payment for Auction 101.'' In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 101 before the deadline.

142. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418–0578, or alternatively, Theresa Meeks at (202) 418–2945.

143. All payments must be made in U.S. dollars. All payments must be made by wire transfer. Upfront payments for Auction 101 go to an account number different from the accounts used in previous FCC auctions.

144. Failure to deliver a sufficient upfront payment as instructed herein by the applicable upfront payment deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. Upfront Payments and Bidding Eligibility

145. The Commission has authority to determine appropriate upfront payments for each license being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses. An upfront payment is a refundable deposit made by each applicant seeking to participate in bidding to establish its eligibility to bid on licenses. Upfront payments that are related to the inventory of licenses being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from

which to collect payments owed at the close of bidding.

146. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For purposes of this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included. For this purpose, the term ''controlling interest'' is defined in 47 CFR 1.2105(a)(4)(i).

147. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the licenses or generic blocks on which it will bid. Generally for Auctions 101 and 102, upfront payments will be based on MHz-pops, and that the amount of the upfront payment submitted by an applicant will determine its initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid on a license or generic block, qualified bidders must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license or generic block in a PEA. The Commission has set bidding units (and corresponding upfront payments) such that all blocks in a PEA, including any blocks with fewer than 100 megahertz of bandwidth, will be assigned the same number of bidding units based on 100 megahertz of bandwidth. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses or at least one generic block in a PEA selected on its FCC Form 175 for Auction 101 or Auction 102, respectively, or else the applicant will not be eligible to participate in the applicable auction. An applicant does not have to make an upfront payment to cover all of the licenses or a block in all of the PEAs it selects on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with the licenses or generic blocks in a PEA on which it wishes to place bids and hold provisionally winning bids in any given round, as applicable. The total upfront payment does not affect the total dollar amount the bidder may bid on any given license or generic block.

148. The Commission adopts a tiered approach under which upfront payment amounts will vary by market population. For the county-based licenses and generic blocks that fall within PEAs 1–50, upfront payments are based on $0.001 per MHz/pop; for those licenses and generic blocks in PEAs 51–100, upfront payments are based on $0.0002 per MHz/pop; and for all other licenses and generic blocks, upfront payments are based on $0.0001 per MHz/pop. The results of these calculations are subject to a minimum of $100 and will be rounded using the Commission's standard rounding procedures for auctions: Results above $10,000 are rounded to the nearest $1,000; results below $10,000 but above $1,000 are rounded to the nearest $100; and results below $1,000 are rounded to the nearest $10. The upfront payments equal approximately half the minimum opening bids. A summary of the upfront payment amounts is set forth in Attachment A of the *Auctions 101 and 102 Procedures Public Notice.* The specific upfront payment amounts and bidding units for each license offered in Auction 101 will be provided in electronic format only, available as a separate ''Attachment A'' file at *www.fcc.gov/auction/101.* Likewise, the specific upfront payment amounts and bidding units for one generic block in each PEA offered in Auction 102 will be provided in electronic format only, available as a separate ''Attachment A'' file at *www.fcc.gov/auction/102.*

149. The Commission will assign each license and generic block in a PEA a specific number of bidding units, but does so with the number of bidding units equal to one bidding unit per $10 of the upfront payment. The number of bidding units for a given license or generic block in a PEA is fixed and does not change during an auction as prices change. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on, if applicable) in any single round for a particular auction, and submit an upfront payment amount for that auction covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all of the licenses or generic blocks in PEAs, as applicable, on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

150. If an applicant is a former defaulter, it must calculate its upfront payment for all of its selected licenses or generic blocks in PEAs, as applicable, by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

G. Auction Registration

151. All qualified bidders for Auctions 101 and 102 are automatically registered for the respective auction. Registration materials will be distributed prior to the auctions by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids and the Auction Bidder Line phone number.

152. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder for Auction 101 that has not received this mailing by noon on November 6, 2018, should call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auctions, and each applicant is responsible for ensuring it has received all the registration materials.

153. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338–2868.

H. Remote Electronic Bidding via the FCC Auction Bidding System

154. Bidders will be able to participate in Auctions 101 and 102 over the internet using the Commission's bidding system (Auction System). Only qualified bidders are permitted to bid. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. A bidder cannot bid without his or her SecurID tokens. For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auctions 101 or 102. Please note that the SecurID® tokens can be recycled, and the Commission encourages bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to

return the tokens once the auction has ended.

155. The Commission makes no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the Auction System, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the Auction System. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the Auction System.

156. To the extent an issue arises with the Auction System itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the Auction System or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the Auction System, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the Auction System.

157. As with the application system, there are occasions when other auction-related systems, including the Commission's Auction System, may be temporarily unavailable due to schedule maintenance of the Commission's IT systems.

I. Mock Auction

158. All qualified bidders will be eligible to participate in a mock auction for whichever auctions they are qualified (*i.e.,* Auction 101 and/or Auction 102), which will be scheduled during the week before the first day of bidding in the applicable auction. The mock auctions will enable qualified bidders to become familiar with the Auction System and to practice submitting bids prior to the auctions. The Commission strongly recommends that all qualified bidders, including all their authorized bidders, participate to assure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auctions may reduce the likelihood of a bidder making a mistake during the auctions. Details regarding the mock auctions will be announced in the *Qualified Bidders Public Notice* for Auction 101 and Auction 102, respectively.

J. Fraud Alert

159. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auctions 101 and 102 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that (a) the Internal Revenue Service, Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

160. Information about deceptive telemarketing investment schemes is available from the FCC as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- The FCC's Consumer Call Center at (888) 225–5322 or by visiting *https://www.fcc.gov/general/frauds-scams-and-alerts-guides*
- the FTC at (877) FTC–HELP ((877) 382–4357) or by visiting *http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm*
- the SEC at (202) 942–7040 or by visiting *https://www.sec.gov/investor*

161. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (202) 835–0618.

IV. Bidding in Auctions 101 and 102

A. Auction 101—28 GHz

1. Auction Structure

a. Simultaneous Multiple-Round Auction

162. The Commission will use its standard SMR auction format for Auction 101. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual licenses. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license.

b. Auction Bidding System

163. All bidding will take place remotely either through the FCC auction bidding system or by telephonic bidding. There will be no on-site bidding during Auction 101. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

164. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

165. An Auction 101 bidder's ability to bid on specific licenses is determined by two factors: (1) The licenses selected on the bidder's FCC Form 175; and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

166. In each round, eligible bidders will be able to place bids on a given license in any of up to nine pre-defined bid amounts. Bidders in Auction 101 may place bids only on individual licenses—they will not be permitted to place any package bids (*i.e.,* bids for multiple licenses in a ''package''). For each license, the FCC auction bidding system will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC auction bidding system also includes an upload function that allows

text files containing bid information to be uploaded.

167. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid on the specific licenses), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If multiple bids are submitted for the same license in the same round, the system takes the last bid entered as that bidder's bid for the round.

c. Availability of Bidding Information

168. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC-held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after Auction 102 closes, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

169. As in past Commission auctions, bidders will have secure access to certain non-public bidding information while bidding is ongoing. Specifically, after each round ends, and before the next round begins, the following information will be made available to individual bidders:

- The bidder's activity, based on all bids in the previous round; and
- Summary statistics of the bidder's bidding/bid-related actions in each round, including the licenses on which it bid and the price it bid for each of those licenses, the result of each of its bids, whether it has any provisionally winning bids, and remaining activity rule waivers.

d. Round Structure

170. Auction 101 will consist of sequential bidding rounds, each followed by the release of round results. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction. Details on viewing round results, including the location and format of downloadable round results files will be included in the same public notice. Multiple bidding rounds may be conducted each day.

171. The Bureau will retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. This will allow the Bureau to change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

e. Eligibility and Activity Rule

172. A bidder's initial (maximum) bidding eligibility (as measured in bidding units) for Auction 101 will be based on its upfront payment. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units as listed in Attachment A. Bidding units assigned to each license do not change as prices rise during the auction. Upfront payments are not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses do not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and therefore its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses selected on its FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

173. The Commission will employ an activity rule that requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. An activity rule helps ensure that an auction closes within a reasonable period of time. The bidding system calculates a bidder's activity in a round as the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. If a bidder removes bids in the current round or withdraws provisionally winning bids, those bids no longer count towards the bidder's activity. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. Specifically, the minimum required activity is expressed as a percentage of the bidder's current eligibility and increases by stage as the auction progresses. The activity rule will be 80 percent during each round of Stage One and 95 percent in Stage Two.

f. Auction Stages

174. The Commission will conduct Auction 101 in two stages. A bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility during each round of Stage One and at least 95 percent of its current bidding eligibility in Stage Two.

175. *Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on bidding units associated with licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4).

176. *Stage Two:* In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

Caution: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have

inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level in the FCC Bidding System.

g. Stage Transitions

177. Auction 101 will start in Stage One. The Bureau will have the discretion to advance the auction to the next stage by announcement in the bidding system during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to, the percentage of bidding units associated with licenses on which there are new bids, the number of new bids, and the increase in revenue.

178. The Bureau will have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it finds that the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent adopted herein. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC auction bidding system.

179. If the Bureau implements stages with activity requirements other than the ones listed, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by the reciprocal of the activity requirement. For example, with a 98 percent activity requirement, the bidder's current round activity would be multiplied by 50/49; with a 100 percent activity requirement, the bidder's current round activity would become its bidding eligibility (current round activity would be multiplied by 1/1).

h. Activity Rule Waivers

180. When a bidder's activity in the current round is below the required minimum level, the bidder may preserve its current level of eligibility through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular license. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round. Specifically, the Commission will provide each bidder in Auction 101 with three activity rule waivers that may be used as set forth at the bidder's discretion during the course of the auction.

181. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

182. A bidder with insufficient activity, however, may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the *reduce eligibility* function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the adopted activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

183. Under the Commission's adopted simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the *proactive waiver* function in the FCC auction bidding system) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC auction bidding system in a round in which there are no new bids or a proactive waiver will not keep the auction open.

i. Stopping Rule

184. For Auction 101, the Commission will employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops on every license. Specifically, bidding will close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. Bidding will remain open on all licenses until bidding stops on every license. Consequently, it is not possible to determine in advance how long the bidding in Auction 101 will last.

185. In addition, the Bureau will retain the discretion to exercise any of the following stopping options during Auction 101:

Option 1. The auction will close for all licenses after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid, or no bidder places any new bid on a license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction will close for all licenses after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in Auction 101), or no bidder places any new bid on a license that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on a FCC-held license (a license that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

Option 3. The auction will close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2.

Option 4. The auction will close after a specified number of additional rounds (special stopping rule) to be announced by the Bureau. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close.

Option 5. The auction will remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will lose bidding eligibility or use a waiver.

186. The Bureau will exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close

prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of Auction 101. For example, the Bureau may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau retains continuing discretion to exercise any of these options with or without prior announcement by the Bureau during the auction.

j. Auction Delay, Suspension, or Cancellation

187. For Auction 101, at any time before or during the bidding process, the Bureau may delay, suspend, or cancel bidding in the auction in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau will notify participants of any such delay, suspension, or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If the bidding is delayed or suspended, the Bureau may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. The Bureau will exercise this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

2. Bid Collection and Winner Determination Procedures

a. Reserve Price or Minimum Opening Bids

188. The Commission has established minimum opening bid amounts for Auction 101. The bidding system will not accept bids lower than these amounts. In addition, the Commission has not established an aggregate reserve price or license reserve prices different from minimum opening bid amounts for the licenses to be offered in Auction 101. A reserve price is an amount below which an item, or group of items, may not be won.

189. For Auction 101, minimum opening bid amounts will be calculated on a license-by-license basis using a formula based on bandwidth and license area population. The Commission adopts a tiered approach, under which minimum opening bid amounts will vary by market population. For the county-based licenses that fall within PEAs 1–50, minimum opening bid amounts are based on $0.002 per MHz/pop; for those in PEAs 51–100, minimum opening bid amounts are based on $0.0004 per MHz/pop; and for all others, minimum opening bid amounts are based on $0.0002 per MHz/pop. A summary of the minimum opening bid amounts is set forth in Attachment A of the *Auctions 101 and 102 Procedures Public Notice.* The specific minimum opening bid amount for each license offered in Auction 101 will be provided in electronic format only, available as a separate ''Attachment A'' file at *www.fcc.gov/auction/101*. The results of these calculations are subject to a minimum of $200 and will be rounded.

b. Bid Amounts

190. In each round, an eligible bidder will be able to place a bid on a given license in any of up to nine different amounts. The FCC auction bidding system interface will list the acceptable bid amounts for each license.

(i) Minimum Acceptable Bid Amounts

191. The first of the acceptable bid amounts is called the minimum acceptable bid amount. In Auction 101, the minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using an activity-based formula. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

192. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated based on an activity index at the end of each round. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. For Round 1 calculations, because there is no prior round (*i.e.,* no round 0), the activity index from the prior round is set at 0. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The result will be rounded using the Commission's standard rounding procedures for auctions. The Commission set the weighting factor initially at 0.5, the minimum percentage at 0.1 (10 percent), and the maximum percentage at 0.2 (20 percent). At these initial settings, the minimum acceptable bid for a license will be between 10 percent and 20 percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment B.

(ii) Additional Bid Amounts

193. The FCC auction bidding system calculates any additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. The Commission will set the additional bid increment percentage at five percent initially. Hence, the calculation of the additional increment amount would be (minimum acceptable bid amount) * (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3*(additional increment amount)); etc.

(iii) Bid Amount Changes

194. The Bureau will retain the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if the Bureau determines

that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis, and the discretion to limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau may set a $100,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the activity-based formula results in a minimum acceptable bid amount that is $200,000 higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at $100,000 above the provisionally winning bid. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC auction bidding system during the auction.

c. Provisionally Winning Bids

195. The FCC auction bidding system will determine provisionally winning bids consistent with practices in past auctions. At the end of each bidding round, the bidding system will determine a provisionally winning bid for each license based on the highest bid amount received for the license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a later round. Provisionally winning bids at the end of Auction 101 become the winning bids.

196. If identical high bid amounts are submitted on a license in any given round (*i.e.,* tied bids), the FCC auction bidding system will use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in later rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the license receives any bids in a later round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

197. A provisionally winning bid will be retained until there is a higher bid on the license at the close of a later round, unless the provisionally winning bid is withdrawn. For Auction 101, a bid that was provisionally winning in a round counts toward bidding activity for purposes of the activity rule in the later round.

d. Bid Removal and Bid Withdrawal

(i) Bid Removal

198. Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively ''unsubmits'' the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

(ii) Bid Withdrawal

199. The Commission will allow each bidder to withdraw provisionally winning bids in no more than two rounds during the course of the auction. The two rounds in which a bidder may withdraw provisionally winning bids will be at the bidder's discretion, and there is no limit on the number of provisionally winning bids that a bidder may withdraw in either of the rounds in which it withdraws bids. Withdrawals must be in accordance with the Commission's rules, including the bid withdrawal payment provisions specified in § 1.2104(g). Once a bid withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

200. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Bureau will retain the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds. The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

(iii) Calculation of Bid Withdrawal Payment

201. Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or later auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or later auction(s). The payment will equal the lower of: (1) The difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or later auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or later auction(s).

202. However, if a license for which a bid had been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that license receives a higher bid or winning bid in a later auction. In such cases, when that final withdrawal payment cannot yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

203. The amount of the interim bid withdrawal payment is established in advance of bidding in each auction and may range from three percent to twenty percent of the withdrawn bid amount. The Commission established an interim bid withdrawal payment of 15 percent of the withdrawn bid for Auction 101. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

3. Auction Results

204. After the Bureau announces the auction results, it will provide a means for the public to view and download bidding and results data.

4. Auction Announcements

205. The Commission and/or Bureau will use auction announcements to report necessary information to bidders, such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

B. Auction 102—24 GHz

1. Auction Structure

c. Clock and Assignment Phases

206. The Commission will conduct Auction 102 using an ascending clock

auction design with two phases. In the first phase of the auction—the clock phase—bidders will indicate their demands for generic license blocks in specific geographic areas (*i.e.,* PEAs). In the second phase—the assignment phase—winning clock-phase bidders will have the opportunity to bid for their preferred combinations of frequency-specific licenses, consistent with their clock-phase winnings, in a series of single sealed-bid rounds conducted by PEA or, in some cases, PEA group.

207. The Bureau has prepared and released, concurrent with the *Auctions 101 and 102 Procedures Public Notice,* updated technical guides that provide the mathematical details of the adopted auction design and algorithms for the clock and assignment phases of Auction 102. The *Auction 102 Clock Phase Technical Guide* details the adopted procedures for the clock phase of Auction 102. The *Auction 102 Assignment Phase Technical Guide* details the adopted procedures for the assignment phase. The information in the updated technical guides supplements the decisions in the *Auctions 101 and 102 Procedures Public Notice.* The guides may be found on the Commission's website at: *https://www.fcc.gov/auction/102.*

d. Generic Blocks and Bidding Categories

208. In the clock phase, the Commission will conduct bidding for generic blocks in two categories in most PEAs (*i.e.,* those without an incumbent licensee). There generally will be two generic blocks in the lower 24 GHz segment (Category L) and five generic blocks in the upper 24 GHz segment (Category U). Therefore, in each round of the clock phase, a bidder will have the opportunity to bid for up to two blocks of spectrum in Category L and for up to five blocks in Category U, in each PEA without an incumbent licensee.

209. An incumbent in the 24 GHz band, currently holds 100 megahertz in Block B in three PEAs (PEA 15—Phoenix, AZ; PEA 26—Las Vegas; PEA 76—Reno, NV) and 25 megahertz in Block G in one PEA (PEA 75—Albuquerque, NM). The Commission will auction the remaining 75 megahertz in PEA 75—Albuquerque, NM, resulting in one additional category in the upper band (Category UI), for a total of three categories.

210. Bidding in the auction will determine a single final clock phase price for the generic blocks in each category in each PEA.

e. Auction Bidding System

211. As is standard practice for FCC auctions, the Commission will conduct Auction 102 over the internet using the FCC auction bidding system. Bidders will also have the option of placing bids by telephone through a dedicated auction bidder line. There will be no on-site bidding during Auction 102. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes. The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the start of bidding in the auction.

212. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a PIN created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

213. An Auction 102 bidder's ability to bid on generic license blocks in specific PEAs is determined by two factors: (1) the PEA(s) selected on the bidder's FCC Form 175; and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids only on categories of generic blocks in the PEA(s) the bidder selected on its FCC Form 175.

214. In the first round of the clock phase, an eligible bidder will indicate how many blocks in a bidding category in a PEA it demands at the minimum opening bid price. The bidding system will not accept bids lower than these amounts. A bidder must have sufficient eligibility to place a bid on the particular license block(s). Bidders in Auction 102 may place bids only on individual license blocks in a category in a PEA—they will not be permitted to place any package bids (*i.e.,* bids for multiple blocks in a ''package''). In each subsequent round, an eligible bidder will be able to express its demand for blocks in a category in a specific PEA at the clock price or at a price between the previous round's price and the new clock price. The FCC auction bidding system also includes an upload function that allows text files containing bid information to be uploaded.

215. During each round of the clock phase, a bidder may also remove bids placed in the current bidding round. If a bidder submits multiple bids for the same category in a PEA in a round, the system takes the last bid entered as that bidder's bid for the round.

216. After the clock phase concludes but before bidding begins in the assignment phase, the auction bidding system will provide to each clock phase winner a menu of assignment phase bidding options consisting of possible configurations of frequency-specific licenses on which it can bid in each category in each PEA in which it holds winning clock phase bids. A bidder can assign a price using a sealed bid to one or more possible frequency assignment options for which it wishes to express a preference, consistent with its winning bids for generic blocks in the clock phase. Participation in the assignment phase is voluntary.

f. Stopping Rule

217. The Commission will use a simultaneous stopping rule for the clock phase of Auction 102, under which all categories of blocks in all PEAs will remain available for bidding until the bidding stops on every category in every PEA. The clock phase of bidding will close for all categories of blocks in all PEAs after the first round in which there is no excess demand in any category in any PEA. Bidding will remain open on all categories of licenses in all PEAs until bidding stops on every category. Consequently, it is not possible to determine in advance how long the bidding in Auction 102 will last.

218. The assignment phase of Auction 102 will close after frequency-specific licenses in all PEAs have been assigned.

g. Availability of Bidding Information

219. The Commission will make public after each round of the clock phase of Auction 102, for each bidding category in each PEA: The supply; the aggregate demand; the posted price of the last completed round; and the clock price for the next round. The posted price of the previous round is, generally: the opening price if supply exceeds demand; the clock price of the previous round if demand exceeds supply; or the price at which a reduction caused demand to equal supply. The identities of bidders demanding blocks in a specific category or PEA will not be disclosed until after Auction 102 concludes (*i.e.,* after the close of bidding in the assignment phase).

220. Each bidder will have access to additional information related to its own bidding and bid eligibility. Specifically, after the bids of a round have been processed, the bidding system will advise each bidder of the number of blocks it holds after the

round (its processed demand) for every category and PEA, and of its eligibility for the next round.

221. After the clock phase concludes but before bidding begins in the assignment phase, the auction bidding system will provide to each assignment phase bidder a menu of bidding options consisting of possible configurations of frequency-specific licenses on which it can bid in each category in each PEA in which it holds winning clock-phase bids. These bidding options will be consistent with the bidder's clock-phase winnings. The bidding system will also announce the order in which assignment rounds will take place and indicate which PEAs will be grouped together for bidding. The bidding system will provide clock phase winning bidders with this information as soon as possible and will announce a schedule of assignment phase rounds that will commence no less than five business days later.

222. After each assignment round, the bidding system will advise each bidder of its own assignment and assignment payment for each PEA or PEA group assigned in the round. The bidding system will also provide each bidder with its current total payment (gross and net) for the PEAs for which an assignment round has already completed, as well as its corresponding capped and uncapped bidding credit discounts. This information will provide the bidder a running estimate during the assignment rounds of the dollar amount it will owe at the end of the auction.

h. Auction Delay, Suspension, or Cancellation

223. At any time before or during the bidding process, the Bureau may delay, suspend, or cancel bidding in Auction 102 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau will notify participants of any such delay, suspension, or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If the bidding is delayed or suspended, the Bureau may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. The Bureau will exercise this authority solely at its discretion.

2. Clock Phase Bid Collection and Bid Processing Procedures

a. Round Structure

224. The Commission will conduct the clock phase of Auction 102 in a series of rounds, with bidding being conducted simultaneously for all spectrum blocks available in the auction. During the clock phase, the Bureau will announce clock prices for blocks in each category in each geographic area, and qualified bidders will submit quantity bids for the number of blocks they seek. Bidding rounds will be open for predetermined periods of time, during which bidders will indicate their demands for blocks at the prices associated with the current round. The round's clock price is the highest price associated with the round. The lowest price associated with a round is the posted price of the previous round. As in SMR auctions, bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

225. In each geographic area, the clock price for a category of generic blocks will increase from round to round if bidders indicate aggregate demand that exceeds the number of blocks available in the category. The clock rounds will continue until, for all categories of blocks in all geographic areas, the number of blocks demanded does not exceed the supply of available blocks. At that point, those bidders indicating demand in a category in a PEA at the final clock phase price will be deemed winning bidders.

226. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding. The Bureau retains the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Accordingly, the Bureau may change the amount of time for bidding rounds, the amount of time between rounds, or the numbers of rounds per day, depending upon bidding activity and other factors.

b. Eligibility and Activity Rule

227. Bidders are required to maintain a minimum, high level of activity in each clock round in order to maintain bidding eligibility, which will help ensure that the auction moves quickly and promote a sound price discovery process. The activity requirement will be set between 92 and 97 percent of a bidder's bidding eligibility in all clock rounds. Further, the initial activity requirement will be set at 95 percent. Failure to maintain the requisite activity level will result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

228. The Commission will use upfront payments to determine initial (maximum) eligibility in terms of bidding units. Each spectrum block in a PEA will be assigned a specific number of bidding units based on the number of MHz-pops in the PEA. Each block available in a PEA will have the same number of bidding units. A bidder's upfront payment will determine the maximum number of blocks as measured by their associated bidding units that a bidder can demand at the start of the auction.

229. Generally, the activity rule will be satisfied when a bidder has bidding activity on blocks with bidding units that total at least 95 percent of its eligibility in the round. If the activity rule is met, then the bidder's eligibility will not change in the next round. Bidding eligibility will be reduced as the auction progresses if a bidder does not meet the activity requirement.

230. For this clock auction, a bidder's activity in a round for purposes of the activity rule will be the sum of the bidding units associated with the bidder's processed demands. For instance, if a bidder requests a reduction in the quantity of blocks it demands in a category, but the FCC auction bidding system does not accept the request because demand for the category would fall below the available supply, the bidder's activity will reflect its unreduced demand.

231. The Bureau will retain the discretion to change the activity requirement before and/or during the auction within the 92–97 percent range, as circumstances warrant. Any changes to the activity requirement will be announced in advance via the auction bidding system, giving bidders sufficient notice to adjust their bidding strategies if needed.

232. Bidders are required to indicate their demands in every round, even if their demands at the new round's prices are unchanged from the previous round. Missing bids—bids that are not reconfirmed—are treated by the auction bidding system as requests to reduce to a quantity of zero blocks for the category. If these requests are applied, or applied partially, a bidder's bidding activity, and hence its bidding eligibility for the next round, will be reduced.

233. The Commission will not provide for activity rule waivers to preserve a bidder's eligibility in the event that its bidding activity does not meet the activity requirement in a

round. Allowing waivers would create uncertainty with respect to the exact level of bidder demand, interfering with the basic clock price-setting and winner determination mechanism. Moreover, uncertainty about the level of demand would affect the way bidders' requests to reduce demand are processed by the FCC auction bidding system.

c. Acceptable Bid Amounts

(i) Reserve Price or Minimum Opening Bids

234. The Commission established minimum opening bid amounts for Auction 102. In Round 1 of the clock phase, a bidder will indicate how many blocks in a bidding category in a PEA it demands at the minimum opening bid price. The bidding system will not accept bids lower than these amounts.

235. Minimum opening bid amounts will be calculated using a formula based on 100 megahertz of bandwidth and license area population for blocks in all categories regardless of actual bandwidth for blocks in a category in a PEA. The Commission adopts a tiered approach, under which minimum opening bid amounts will vary by market population. For PEAs 1–50, minimum opening bid amounts are based on $0.002 per MHz/pop; for PEAs 51–100, minimum opening bid amounts are based on $0.0004 per MHz/pop; and for all other PEAs, minimum opening bid amounts are based on $0.0002 per MHz/pop. A summary of the minimum opening bid amounts is set forth in Attachment A of the *Auctions 101 and 102 Public Notice.* The specific minimum opening bid amount for each license offered in Auction 102 will be provided in electronic format only, available as a separate ''Attachment A'' file at *www.fcc.gov/auction/102.* The results of these calculations are subject to a minimum of $200 and will be rounded.

(ii) Clock Price Increments

236. After bidding in the first round and before each later round, the FCC auction bidding system will announce a clock price for the next round, which is the highest price to which bidders can respond during the round. For each round, the clock price for each category in each PEA will be set by adding a fixed percentage increment to the posted price for the previous round. As long as aggregate demand for blocks in a category exceeds the supply of blocks, the percentage increment will be added to the clock price from the prior round. If demand equaled supply at an intra-round bid price in a previous round, then the clock price for the next round will be set by adding the percentage increment to the intra-round bid price.

237. The initial increment will be set at ten percent. The Commission may adjust the increment as rounds continue. The five-to-fifteen percent increment range will allow the FCC to set a percentage that manages the auction pace, taking into account bidders' needs to evaluate their bidding strategies while moving the auction along quickly. Increments may be changed during the auction on a PEA-by-PEA or category-by-category basis based on bidding activity to ensure that the system can offer appropriate price choices to bidders.

(iii) Intra-Round Bids

238. The Commission will permit a bidder to make intra-round bids by indicating a price between the previous round's posted price and the new clock price at which its demand for blocks in a category in a PEA changes. In placing an intra-round bid, a bidder will indicate a specific price and a quantity of blocks it demands if the price for blocks in the category in the PEA should increase beyond that price. For example, consider a round where the clock price increases from $100 to $110. A bidder indicated in the previous round that it demanded 3 blocks at $100, but its demand changes from 3 blocks to 2 blocks when the price increases beyond $105 and up to $110. To indicate that preference, the bidder should submit an intra-round bid for 2 blocks at a price of $105.

239. Intra-round bids are optional; a bidder may choose to express its demands only at the clock prices.

(iv) Bid Removal and Bid Withdrawal

240. The FCC auction bidding system allows a bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively ''unsubmits'' the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

241. Bid withdrawals, analogous to withdrawals of provisionally winning bids in an SMR auction, are not available in Auction 102. However, bidders in Auction 102 may request to reduce demand for generic blocks in a bidding category.

(v) No Bidding Aggregation

242. The Commission does not adopt any package bidding procedures for the clock phase of Auction 102. A bidder may bid for multiple blocks in a bidding category in a PEA and may submit bids for multiple PEAs. The assignment phase will assign contiguous blocks to winners of multiple blocks in a category in a PEA, and give bidders an opportunity to express their preferences for specific frequency blocks, thereby facilitating aggregations of licenses.

d. Changing Demand, Bid Types, and Bid Processing

243. For each category in each PEA, a bidder can either bid to maintain its processed demand from the previous round at the current round's clock price or bid to change its demand at a price associated with the round. A bid to change demand could involve either a decrease or an increase in the demanded quantity.

244. Bids to maintain demand are always applied during bid processing. However, if a bidder demands fewer blocks in a category than its processed demand from the previous round, the bidding system will treat the bid as a request to reduce demand that will be implemented only if aggregate demand would not fall below the available supply of blocks in the category. If a bidder demands more blocks in a category than its processed demand from the previous round, the bidding system will treat the bid as a request to increase demand that will be implemented only if that would not cause the bidder's activity to exceed its eligibility.

245. The bidding system will process bids after a round ends in order of price point, where the price point represents the percentage of the bidding interval for the round. For example, if the posted price for the previous round is $5,000 and the clock price of the current round is $6,000, a price of $5,100 will correspond to the 10 percent price point, since it is 10 percent of the bidding interval between $5,000 and $6,000. Once a round ends, the bidding system will process bids in ascending order of price point, first considering intra-round bids in order of price point and then bids at the clock price. The system will consider bids at the lowest price point for all categories in all PEAs, then look at bids at the next price point, and so on. In processing the bids submitted in the round, the FCC auction bidding system will determine the extent to which there is excess demand for each category in each PEA in order to determine whether a bidder's

requested reduction(s) in demand can be implemented. In processing the bids submitted in the round, the FCC auction bidding system will also determine the bidding units associated with a bidder's most recent processed demand in order to determine whether the bidder's requested increase(s) in demand can be implemented.

246. For a given category in a given PEA, the uniform price for all of the blocks in the category will stop increasing when aggregate demand no longer exceeds the available supply of blocks in the category. If no further bids are placed, the final clock phase price for the category will be the stopped price.

247. In order to facilitate bidding for multiple blocks in a PEA, bidders will be permitted to make two types of bids: simple bids and switch bids.

- A ''simple'' bid indicates a desired quantity of licenses in a category at a price (either the clock price or an intra-round price). Simple bids may be applied partially. A simple bid that involves a reduction from the bidder's previous demands may be implemented partially if aggregate excess demand is insufficient to support the entire reduction. A simple bid to increase a bidder's demands in a category may be applied partially if the total number of bidding units associated with the bidder's demand exceeds the bidder's bidding eligibility for the round.
- A ''switch'' bid allows the bidder to request to move its demand for a quantity of licenses from the L category to the U category, or vice versa, within the same PEA. Switch bids may not be made between Category U or L and Category UI. A switch bid may be applied partially, but the increase in demand in the ''to'' category will always match in quantity the reduction in the ''from'' category.

248. These bid types will allow bidders to express their demand for blocks in the next clock round without running the risk that they will be forced to purchase more spectrum at a higher price than they wish. When a bid to reduce demand can be applied only partially, the uniform price for the category will stop increasing at that point, since the partial application of the bid results in demand falling to equal supply. Hence, a bidder that makes a simple bid or a switch bid that cannot be fully applied will not face a price for the remaining demand that is higher than its bid price.

249. Because in any given round some bidders may increase demands for licenses in a category while others may request reductions, the price point at which a bid is considered by the bidding system can affect whether it is accepted. However, bids not accepted because of insufficient aggregate demand or insufficient eligibility at a given price point will be held in a queue and considered, again in order, if there should be excess supply or sufficient eligibility later in the processing after other bids are processed.

250. Once a round closes, the auction system will process the bids by first considering the bid submitted at the lowest price point and determine whether it can be accepted given aggregate demand as determined most recently and given the associated bidder's eligibility. If the bid can be accepted, or partially accepted, the number of licenses the bidder demands will be adjusted, and aggregate demand will be recalculated accordingly. If the bid cannot be accepted in part or in full, the unfulfilled bid, or portion thereof, will be held in a queue to be considered later during bid processing for that round. The FCC auction bidding system will then consider the bid submitted at the next highest price point, accepting it in full, in part, or not at all, given recalculated aggregate demand and given the associated bidder's eligibility. Any unfulfilled requests will again be held in a queue, and aggregate demand will again be recalculated. Every time a bid or part of a bid is accepted and aggregate demand has been recalculated, the unfulfilled bids held in queue will be reconsidered, in the order of their original price points (and by pseudo-random number, in the case of tied price points). The auction bidding system will not carry over unfulfilled bid requests to the next round, however. The bidding system will advise bidders of the status of their bids when round results are released.

251. After the bids are processed in each round, the FCC auction bidding system will announce, for each bidding category in each PEA: the aggregate demand; the posted price; and the clock price for the next round, to indicate a range of acceptable bids for the next round. If demand fell to equal supply during the round, the posted price will be equal to the intra-round price at which that occurred. If there is excess demand, a fixed percentage increment will be added to the clock price for the previous round, and this percentage increment will be the same for all categories in all PEAs. However, if in the round, an intra-round bid brings demand down to the point at which it is equal to supply, the increment will be added to that intra-round price. Each bidder will also be informed of its own processed demand for every category and PEA and of its own eligibility for the next round.

e. Winning Bids in the Clock Phase

252. Bidders that hold processed demand in a category in a PEA at the time the stopping rule is met will become winning bidders and will be assigned frequency-specific licenses in the assignment phase.

253. The final clock phase price is the posted price of the final round. This will be the price at which a reduction caused demand for the blocks to equal the supply of blocks in the category in the PEA. For categories in PEAs where supply exceeds demand, the final clock phase price will be the opening price.

3. Assignment Phase Bid Collection and Bid Processing Procedures

254. The assignment phase will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase. In the assignment phase, winning bidders will have the opportunity to bid for preferred combinations of frequency-specific licenses. A bidder can assign a price using a sealed bid to one or more possible frequency assignments for which it wishes to express a preference, consistent with its winning bids for generic blocks in the clock phase. For instance, if a bidder won two Category U blocks and one Category L block in the clock phase, then it will only be offered the option of bidding for frequency assignments with exactly two Category U licenses and for frequency assignments with exactly one Category U license. The bid prices will represent the maximum payment that the bidder is willing to pay for the frequency-specific license assignment, in addition to the final price established in the clock phase for the generic blocks. These procedures will determine the optimal assignment of licenses within each PEA based on bid amounts in the assignment phase. As a simple example, assume two bidders won one Category L block each in a given PEA in the clock phase, so each was presented with bidding options Block A and Block B. One bidder bid 10 for Block A and 0 for Block B, the other bidder bid 12 for Block A and 0 for Block B in the assignment phase. The auction system will assign Block A to the second bidder, and Block B to the first bidder.

255. Participation in the assignment phase is voluntary: A winning bidder in the clock phase of Auction 102 need not participate in order to be assigned a number of licenses corresponding to the outcome of the clock phase. Moreover, a bidder that wins multiple blocks in a

category in a PEA will be assigned contiguous blocks of licenses, even without participating in the assignment phase. A winner of a block in a category that includes only a single block will not bid for an assignment in the assignment phase.

a. Round Structure: Sequencing and Grouping of Rounds

256. Sequencing of rounds. The Commission will conduct assignment rounds for the largest markets first. The Commission will conduct a separate assignment round for each of the top 40 PEAs sequentially, beginning with the largest PEAs. Top 40 PEAs are PEAs 1–40. Once the top 40 PEAs have been assigned, the Commission will conduct, for each Regional Economic Area Grouping (REAG), a series of assignment rounds for the remaining PEAs within that region. The Commission will sequence the assignment rounds within a REAG in descending order of population for a PEA group or individual PEA.

257. Grouping of PEAs. To reduce the total amount of time required to complete the assignment phase, where feasible, the Commission will group into a single market for assignment any non-top 40 PEAs within a region in which the supply of blocks is the same in each category, the same bidders won the same number of blocks in each category, and all are subject to the small markets bidding cap or all not subject to the cap, which will also help maximize contiguity across PEAs. Accordingly, in markets where these criteria are met, a bidder will submit a single set of bids for assignment options that will apply to all the PEAs in the group and will be assigned the same frequency-specific licenses in each PEA.

258. In addition, to the extent practical, the Commission will conduct the bidding for the different REAGs in parallel. That is, bidding for assignments in multiple PEAs or PEA groups will take place during the same timed bidding round. This will also help reduce the length of the assignment phase.

b. Acceptable Bids and Bid Processing

259. Prior to the start of the assignment phase, the bidding system will provide each bidder with bidding options for all possible contiguous frequency assignments for each category in each PEA in which the bidder won blocks in the clock phase. In each assignment round, a bidder will be asked to assign a price to one or more of the bidding options for which it wishes to express a preference, consistent with its winning bid(s) for generic blocks in the clock phase. The price will represent a maximum payment that the bidder is willing to pay, in addition to the base price established in the clock phase for the generic blocks, for the frequency-specific license or licenses in its bid.

260. A bidder will submit its preferences for blocks it won in the upper and lower segments separately, rather than submitting bids for preferences that include blocks in both segments. That is, if a bidder won one block in the lower segment and two blocks in the upper segment, it would not be able to submit a single bid amount for an assignment that included all three blocks. Instead, it would submit its bid for an assignment in the lower segment separately from its bid or bids for assignments in the upper segment.

261. An optimization approach will be used to determine the winning frequency assignment for each category in each PEA or PEA group. The Commission adopts procedures such that the auction bidding system will select the assignment that maximizes the sum of bid amounts among all assignments where every bidder is assigned contiguous spectrum. If multiple blocks in Category U in a PEA remain unsold, the unsold licenses will be contiguous.

262. Further, the additional price a bidder will pay for a specific frequency assignment (above the final clock phase price) will be calculated consistent with a generalized ''second price'' approach—that is, the winner will pay a price that would be just sufficient to result in the bidder receiving that same winning frequency assignment while ensuring that no group of bidders is willing to pay more for an alternative assignment where every bidder is assigned contiguous spectrum. This price will be less than or equal to the price the bidder indicated it was willing to pay for the assignment. Determining prices in this way encourages bidders to bid their full value for the assignment, knowing that if the assignment is selected, they will pay no more than would be necessary to ensure that the outcome is competitive.

c. Assignment Phase Payment Calculations

263. When all assignment rounds have completed, a bidder's final payment is determined by summing the final clock phase prices across all licenses that it won and its assignment payments across all assignment phase markets, and then applying any applicable bidding credit discounts to the sum.

4. Calculating Individual License Prices

264. While final auction payments for winning bidders will be calculated with bidding credit caps and assignment payments applied on an aggregate basis, rather than to individual licenses, the auction bidding system will also calculate a per-license price for each license. Such individual prices may be needed if a licensee later incurs license-specific obligations, such as unjust enrichment payments.

265. After the assignment phase, the auction bidding system will determine a net and gross post-auction price for each license that was won by a bidder by apportioning assignment payments and bidding credit discounts (only applicable for the net price) across all the licenses that the bidder won. To calculate the gross per-license price, the auction bidding system will apportion the assignment payment to licenses in proportion to the final clock phase price of the licenses that the bidder is assigned in that category and market. To calculate the net price, the auction bidding system will first apportion any applicable bidding credit discounts to each category and assignment phase market in proportion to the gross payment for that category and that market. Then, for each assignment phase market, the auction bidding system will apportion the assignment payment and the discount to licenses in proportion to the final clock phase price of the licenses that the bidder is assigned in that category for that market.

5. Auction Results

266. After the Bureau announces the auction results, it will provide a means for the public to view and download bidding and results data.

6. Auction Announcements

267. The Commission and/or Bureau will use auction announcements to report necessary information to bidders, such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

V. Post-Auction Procedures

268. Shortly after bidding has ended in each auction, the Commission will issue a public notice declaring that the respective auction closed and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 601) for the auction.

A. Down Payments

269. Within 10 business days after release of the auction closing public

notices for Auctions 101 and 102, respectively, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for the applicable auction to 20 percent of the net amount of its winning bids (gross bids less any applicable bidding credits).

B. Final Payments

270. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids for each auction within 10 business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

271. The Commission's rules provide that, within 10 business days after release of the auction closing public notice for a particular auction (*i.e.,* Auction 101 or Auction 102), winning bidders must electronically submit a properly completed post-auction application (FCC Form 601) for the license(s) they won through the auction.

272. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility in its FCC Form 601 post-auction application for the bidding credit sought. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notices for Auctions 101 and 102, respectively.

273. Winning bidders organized as bidding consortia must comply with the FCC Form 601 post-auction application procedures set forth in § 1.2107(g) of the Commission's rules. Specifically, license(s) won by a consortium must be applied for as follows: (a) An individual member of the consortium or a new legal entity comprising two or more individual consortium members must file for licenses covered by the winning bids; (b) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate FCC Form 601 for its/their respective license(s) in their legal business name; (c) in the case of a license to be partitioned or disaggregated, the member or group filing the applicable FCC Form 601 shall include the parties' partitioning or disaggregation agreement with the FCC Form 601; and (d) if a DE credit is sought (either small business or rural service provider), the applicant must meet the applicable eligibility requirements in the Commission's rules for the credit.

D. Ownership Disclosure Information Report (FCC Form 602)

274. Within 10 business days after release of the auction closing public notices for Auctions 101 and 102, respectively, each winning bidder must also comply with the ownership reporting requirements in §§ 1.913, 1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.

275. If a winning bidder already has a complete and accurate FCC Form 602 on file in the FCC's Universal Licensing System (ULS), it is not necessary to file a new report, but the winning bidder must certify in its FCC Form 601 application that the information on file with the Commission is complete and accurate. If the winning bidder does not have an FCC Form 602 on file, or if it is not complete and accurate, it must submit one.

276. When a winning bidder submits an FCC Form 175, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the winning bidder's FCC Form 175 application. A winning bidder must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the FCC Form 601 post-auction application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notices for Auctions 101 and 102, respectively.

E. Tribal Lands Bidding Credit

277. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in §§ 1.2107 and 1.2110(f) of the Commission's rules. A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

278. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application. When initially filing the post-auction application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the winning bidder will have 180 days from the close of the post-auction application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in § 1.2110(f)(3)(vii). For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices.

F. Default and Disqualification

279. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in § 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

280. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. The Commission set the additional default payment for Auctions 101 and 102 at 15 percent of the applicable bid.

281. In case they are needed for post-auction administrative purposes, the bidding system will calculate individual per-license prices that are separate from final auction payments, which are calculated on an aggregate basis. The bidding system will apportion to individual licenses any assignment phase payments and any capped bidding credit discounts, since in both cases, a single amount may apply to multiple licenses.

282. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the

Commission may declare the applicant and its principals ineligible to bid in future auctions and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

G. Refund of Remaining Upfront Payment Balance

283. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Since the upfront payments for each auction will be deposited and maintained in separate accounts, the Commission will not apply a bidder's refund of its upfront payment balance from Auction 101 to its upfront payment balance for Auction 102. Bidders are encouraged to use the Refund Information icon found on the *Auction Application Manager* page or the Refund Form link available on the *Auction Application Submit Confirmation* page in the FCC Auction Application System to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail, fax, or email as instructed in the *Auctions 101 and 102 Procedures Public Notice.*

284. If an applicant elected not to access the Refund Form through the Auction Application Manager page, the information requested in paragraph 299 of the *Auctions 101 and 102 Procedures Public Notice* must be supplied in writing and submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418–2843, by email to *RROGWIREFAXES@fcc.gov,* or by mail to the Federal Communications Commission, Financial Operations, Revenue & Receivables Operations Group/Auctions, Gail Glasser, 445 12th Street SW, Room 1–C864, Washington, DC 20554. Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578 or Theresa Meeks at (202) 418–2945.

VI. Supplemental Final Regulatory Flexibility Analysis

285. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (Spectrum Frontiers IRFAs) were incorporated in the Notice of Proposed Rulemakings in the *2016 Spectrum Frontiers Order, 2017 Spectrum Frontiers Order, and 2018 Spectrum Frontiers Order* (collectively, *Spectrum Frontiers Orders*) and other Commission orders pursuant to which Auctions 101 and 102 will be conducted. A Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auctions 101 and 102 Comment Public Notice.* The Commission sought written public comment on the proposals in NPRMs and the *Auctions 101 and 102 Comment Public Notice,* including comments on the Spectrum Frontiers IRFAs and the Supplemental IRFA. No comments were filed addressing the Spectrum Frontiers IRFAs or the Supplemental IRFA. Final Regulatory Flexibility Analyses (FRFAs) were also incorporated in the *Spectrum Frontiers Orders* pursuant to which Auctions 101 and 102 will be conducted. The Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the *Spectrum Frontiers FRFAs* to reflect the actions taken in the *Auctions 101 and 102 Procedures Public Notice* and conforms to the RFA.

286. Need for, and Objectives of, the Public Notice. The *Auctions 101 and 102 Procedures Public Notice* implements competitive bidding rules adopted by the Commission in multiple notice-and-comment rulemaking proceedings as well as establishes additional procedures to be used by the Bureau, on delegated authority, for competitive bidding in Auctions 101 and 102 for 5,984 UMFUS licenses. The rules and procedures adopted for Auctions 101 and 102 seek to balance three goals: (1) Promoting competition in the auction; (2) avoiding undue burdens on the applicants; and (3) assigning mmW band licenses as expeditiously as possible. More specifically, the *Auctions 101 and 102 Procedures Public Notice* provides an overview of the procedures, the auction dates and deadlines, requirements for participants, terms and conditions governing Auctions 101 and 102 and the post-auction application and payment processes, as well as setting the minimum opening bid amounts for each of the licenses offered in Auctions 101 and 102.

287. To promote the efficient and fair administration of the competitive bidding process for all Auction 101 and Auction 102 participants, the Commission in the *Auctions 101 and 102 Procedures Public Notice* adopted the following procedures:

- Use of separate application and bidding processes for Auctions 101 and 102, including concurrent application filing windows;
- application of the current rules prohibiting certain communications among and between applicants in either auction;
- identification of AT&T, Sprint, T-Mobile and Verizon Wireless as ''nationwide providers'' for the purpose of implementing the Commission's competitive bidding rules in Auctions 101 and 102;
- establishment of bidding credit caps for eligible small businesses and rural service providers in Auctions 101 and 102;
- use of a simultaneous multiple-round auction format for Auction 101, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion by the Bureau to exercise alternative stopping rules under certain circumstances);
- use of a clock auction format for Auction 102 under which each qualified bidder will indicate in successive clock bidding rounds its demands for categories of generic blocks in specific geographic areas;
- a specific minimum opening bid amount for each license available in Auction 101 and for generic blocks in each PEA available in Auction 102;
- a specific upfront payment amount for each license available in Auction 101 and for generic blocks in each PEA available in Auction 102;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each license (Auction 101) or generic block (Auction 102);
- use of an activity rule that would require bidders to bid actively during the auction rather than waiting until late in the auction before participating;
- for Auction 101, a two-stage auction in which a bidder is required to be active on 80 percent of its bidding eligibility in each round of the first stage and on 95 percent of its bidding eligibility in each round of the second stage;
- for Auction 102, a requirement that bidders be active on between 92 and 97 percent of their bidding eligibility in all regular clock rounds;
- for Auction 101, provision of three activity rule waivers for each bidder to allow it to preserve eligibility during the course of the auction;
- for Auction 101, use of minimum acceptable bid amounts and additional bid increments, along with a methodology for calculating such amounts, with the Bureau retaining discretion to change its methodology if circumstances dictate;
- for Auction 102, establishment of acceptable bid amounts, including clock price increments and intra-round bids,

along with a methodology for calculating such amounts;

- for Auction 102, use of two bid types, along with a methodology for processing bids and requests to reduce demand;
- for Auction 101, a procedure for breaking ties if identical high bid amounts are submitted on a license in a given round;
- bid removal procedures;
- for Auction 101, provisions for bid withdrawals, including the establishment of an interim bid withdrawal percentage of 15 percent of the withdrawn bid;
- for Auction 102, prohibition of withdrawals;
- for Auction 102, establishment of an assignment phase that will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase; and
- establishment of an additional default payment of 15 percent under § 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after either auction.

288. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. There were no comments filed that addressed the procedures and policies proposed in the *Spectrum Frontiers IRFAs* or the Supplemental IFRA.

289. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed procedures as a result of those comments.

290. The Chief Counsel did not file any comments in response to the proposed procedures in the *Auctions 101 and 102 Comment Public Notice.*

291. Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

292. FRFAs were incorporated into the *Spectrum Frontiers Orders.* In those analyses, the Commission described in detail the small entities that might be significantly affected. In the *Auctions 101 and 102 Procedures Public Notice,* the Commission hereby incorporates by reference the descriptions and estimates of the number of small entities from the previous FRFAs in the *Spectrum Frontiers Orders.*

293. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities. The Commission has designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. The *Auctions 101 and 102 Procedures Public Notice* provides instructions for each Auction 101 and 102 applicant to maintain the accuracy of its respective short-form application electronically using the FCC Auction Application System and/or by direct communication with the Auctions and Spectrum Access Division. Small entities and other Auction 101 and Auction 102 applicants will be qualified to bid in the respective auction(s) only if they comply with the following: (1) Submission of a separate short-form application for each auction in which they wish to participate that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the licenses offered in Auctions 101 or 102, respectively. The timely submitted payment must be accompanied by a complete and accurate FCC Remittance Advice Form (FCC Form 159), and made by 6:00 p.m. ET on October 23, 2018, for Auction 101 and on a date to be announced for Auction 102, following the procedures and instructions set forth in the FCC Form 159 Instructions. An applicant whose application is found to contain deficiencies will have a limited opportunity to bring its application into compliance with the Commission's competitive bidding rules during a resubmission window. All qualified bidders will automatically be registered for the auction and mailed the necessary registration materials.

294. In the second phase of the process, there are additional compliance requirements for winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the following: (1) Within 10 business days of release of the auction closing public notice for each auction (*i.e.,* Auction 101 or Auction 102), submit as a down payment sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for the applicable auction to 20 percent of the net amount of its winning bids; (2) within 10 business days after the down payment deadline submit the balance of the net amount for each of its winning bids; and (3) within 30 days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auctions 101 and 102, respectively. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility in its FCC Form 601 post-auction application for the bidding credit sought.

295. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

296. The Commission believes that the adopted procedures to facilitate participation in Auctions 101 and 102 will result in both operational and administrative cost savings for small entities and other auction participants. For example, in order to reduce the financial burden on small entities and other potential auction participants, as well as to reduce potential exposure risk, the Commission will accept

upfront payments for Auction 102 after the close of Auction 101. Additionally, for Auctions 101 and 102, two levels of bidding credits will be available to eligible small businesses and consortia thereof up to a maximum amount of $25 million per auction ($50 million combined for both auctions). This application of bidding credit caps separately to each auction should provide additional opportunities for participation by small businesses. Also, public data on Auction 101 results will be made available prior to the start of bidding in Auction 102. This data should provide potential Auction 102 bidders with sufficient information to analyze and understand price levels and demand for UMFUS licenses in Auction 101.

297. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures adopted for Auctions 101 and 102 should result in minimal economic impact on small entities. For example, prior to each auction, the Commission will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the processes and systems that will be used in Auctions 101 and 102. During the auctions, participants will be able to access and participate in the auctions via the internet using a web-based system, or telephonically, providing two cost effective methods of participation avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of hotlines for assistance with auction processes and procedures as well as technical support hotlines to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. In addition, all auction participants will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These steps coupled with the advanced communication of the bidding procedures ''rules of the road'' in Auctions 101 and 102 should ensure that the auctions will be administered efficiently and fairly, with certainty for small entities as well as other auction participants.

298. Report to Congress. The Commission will send a copy of the *Auctions 101 and 102 Procedures Public Notice,* including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Auctions 101 and 102 Procedures Public Notice,* including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Auctions 101 and 102 Procedures Public Notice* (or summaries thereof) will also be published in the **Federal Register**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

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