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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0754; Product Identifier 2018–CE–028–AD; Amendment 39–19365; AD 2018–17–11]

RIN 2120–AA64

Airworthiness Directives; Linstrandt Propane Cylinders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Linstrandt T30 propane cylinders installed on hot air balloons. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as welding defects on the propane cylinder that could result in leaking of liquid propane. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 24, 2018.

We must receive comments on this AD by October 19, 2018.

ADDRESSES: You may send comments 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2018–0754; 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 regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2018–0107, dated May 15, 2018, corrected on May 22, 2018 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A review of cylinder production records has shown that the affected cylinders have unacceptable welding defects.
>
> This condition, if not detected and corrected, could result in an uncontrolled release of liquid propane and consequent fire or explosion, with consequent injury to balloon occupants and persons on the ground.
>
> To address this potential unsafe condition, Cameron Balloons Limited issued the SB, providing instructions to remove the affected cylinders from service.
>
> For the reasons described above, this [EASA] AD requires replacement of the affected cylinders with serviceable parts.
>
> This [EASA] AD is re-published to correct the list of TCDS numbers. The TCDS EASA.SAS.BA.001 was erroneously introduced, and has been removed, as it is not for a hot air balloon.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0754.

FAA's Determination and Requirements of the AD

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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 replacement of the propane cylinders is required within 30 days. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less 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–2018–0754; Product Identifier 2018–CE–028–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 because of 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 will affect 10 propane cylinders. We also estimate that it would take about 2 work-hours to replace a cylinder, at an average labor rate of $85 per work-hour, and required parts would cost about $3,000 per product. Based on these figures, we estimate a total cost of $3,170 per balloon.

We know the unsafe condition affects 10 propane cylinders worldwide; however, we have no way of knowing the number of hot air balloons on the U.S. Registry that may have an affected propane cylinder installed. As such, we have no way of estimating the potential costs of compliance on U.S. operators.

Authority for This Rulemaking

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

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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation 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):

2018–17–11 Linstrandt Propane Cylinders: Amendment 39–19365; Docket No. FAA–2018–0754; Product Identifier 2018–CE–028–AD.

(a) Effective Date

This AD becomes effective September 24, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Linstrandt T30 part number (P/N) CY050001 propane cylinders, serial numbers (S/N) 0227/0158, 0316/–, 0321/–, 0322/0150, 0446/0152, 0534/0145, 0539/–, 0543/0154, 0626/0153, and 0638/0151; installed on hot air balloons.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as welding defects on the propane cylinders that could result in leaking of liquid propane. We are issuing this AD to prevent leaking of liquid propane that could lead to fire or explosion.

(f) Actions and Compliance

(1) If any hot air balloon has an affected P/N and serial number propane cylinder, as listed in paragraph (c) of this AD, within 30 days after September 24, 2018 (the effective date of this AD), remove from service Linstrandt T30 propane cylinder P/N CY050001 and replace with a propane cylinder that is not listed in paragraph (c) of this AD.

(2) After September 24, 2018 (the effective date of this AD), do not install on any hot air balloon a propane cylinder listed in paragraph (c) of this AD.

(g) Other FAA AD Provisions

The following provision also applies to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Reserved.

(h) Related Information

Refer to MCAI EASA AD No. 2018–0107, dated May 15, 2018, corrected on May 22, 2018, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0754.

(i) Material Incorporated by Reference

None.

Issued in Kansas City, Missouri, on August 10, 2018.

Melvin J. Johnson,

Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–18990 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31212; Amdt. No. 3816]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument

Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 4, 2018. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2018.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on August 24, 2018.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

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11–Oct–18	WI	Superior	Richard I Bong	8/7692	8/10/18	RNAV (GPS) RWY 22, Orig-A.
11–Oct–18	WI	Superior	Richard I Bong	8/7694	8/10/18	RNAV (GPS) RWY 32, Orig-A.
11–Oct–18	NC	Mocksville	Twin Lakes	8/7696	8/9/18	RNAV (GPS) RWY 9, Amdt 1A.
11–Oct–18	ME	Augusta	Augusta State	8/7787	8/9/18	ILS OR LOC RWY 17, Amdt 3A.
11–Oct–18	OK	Madill	Madill Muni	8/7792	8/10/18	RNAV (GPS) RWY 18, Orig.
11–Oct–18	OK	Madill	Madill Muni	8/7800	8/10/18	VOR/DME–A, Amdt 3.
11–Oct–18	OH	Wilmington	Wilmington Air Park	8/7987	8/10/18	ILS OR LOC RWY 4L, Amdt 4B.
11–Oct–18	OK	Guymon	Guymon Muni	8/8036	8/21/18	NDB RWY 18, Amdt 5B.
11–Oct–18	OH	Kent	Kent State Univ	8/8791	8/10/18	NDB RWY 1, Amdt 13B.
11–Oct–18	OH	Kent	Kent State Univ	8/8804	8/10/18	RNAV (GPS) RWY 19, Amdt 1A.
11–Oct–18	TX	Palacios	Palacios Muni	8/8814	8/21/18	RNAV (GPS) RWY 13, Orig-A.
11–Oct–18	MI	Grayling	Grayling AAF	8/9448	8/9/18	RNAV (GPS) RWY 14, Orig-B.
11–Oct–18	MI	Grayling	Grayling AAF	8/9452	8/9/18	NDB RWY 14, Amdt 8B.
11–Oct–18	MI	Grayling	Grayling AAF	8/9453	8/9/18	VOR RWY 14, Amdt 2B.
11–Oct–18	TX	Port Isabel	Port Isabel-Cameron County	8/9676	8/14/18	RNAV (GPS) RWY 13, Amdt 1.
11–Oct–18	TX	Port Isabel	Port Isabel-Cameron County	8/9677	8/14/18	VOR–A, Amdt 6A.
11–Oct–18	WI	New Richmond	New Richmond Rgnl	8/9813	8/14/18	RNAV (GPS) RWY 14, Amdt 2C.
11–Oct–18	KS	Salina	Salina Rgnl	8/9851	8/21/18	NDB RWY 35, Amdt 17A.
11–Oct–18	KS	Harper	Harper Muni	8/9939	8/10/18	VOR OR GPS–B, Amdt 1A.
11–Oct–18	ME	Bar Harbor	Hancock County-Bar Harbor	8/9951	8/10/18	ILS OR LOC RWY 22, Amdt 6B.

[FR Doc. 2018–18878 Filed 8–31–18; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31209; Amdt. No. 3814]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 4, 2018. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2018.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on August 10, 2018.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
13–Sep–18	NE	Fairbury	Fairbury Muni	8/3783	7/23/18	This NOTAM, published in TL 18–19, is hereby rescinded in its entirety.
13–Sep–18	MD	Annapolis	Lee	8/3830	7/23/18	This NOTAM, published in TL 18–19, is hereby rescinded in its entirety.
13–Sep–18	NY	Le Roy	Le Roy	8/5610	7/25/18	This NOTAM, published in TL 18–19, is hereby rescinded in its entirety.
13–Sep–18	GA	Calhoun	Tom B David Fld	8/8262	7/23/18	This NOTAM, published in TL 18–19, is hereby rescinded in its entirety.
13–Sep–18	GA	Calhoun	Tom B David Fld	8/8265	7/23/18	This NOTAM, published in TL 18–19, is hereby rescinded in its entirety.
13–Sep–18	NJ	Ocean City	Ocean City Muni	8/8675	7/10/18	This NOTAM, published in TL 18–19, is hereby rescinded in its entirety.
13–Sep–18	NJ	Ocean City	Ocean City Muni	8/8676	7/10/18	This NOTAM, published in TL 18–19, is hereby rescinded in its entirety.
13–Sep–18	TX	Houston	David Wayne Hooks Memorial.	8/8861	7/25/18	This NOTAM, published in TL 18–19, is hereby rescinded in its entirety.
13–Sep–18	FM	Pohnpei Island	Pohnpei Intl	7/4159	8/2/18	RNAV (RNP) Y RWY 9, Amdt 2.
13–Sep–18	TX	Houston	David Wayne Hooks Memorial.	8/0653	8/3/18	RNAV (GPS) RWY 35L, Amdt 1C.
13–Sep–18	NE	Fairbury	Fairbury Muni	8/0656	8/3/18	NDB–A, Amdt 3B.
13–Sep–18	MS	Starkville	George M Bryan	8/1534	8/6/18	LOC/DME RWY 36, Amdt 1A.
13–Sep–18	NJ	Ocean City	Ocean City Muni	8/1625	8/8/18	GPS RWY 6, Orig-B.
13–Sep–18	GA	Pine Mountain	Harris County	8/1840	7/27/18	VOR–A, Amdt 5B.
13–Sep–18	GA	Pine Mountain	Harris County	8/1842	7/27/18	RNAV (GPS) RWY 9, Orig-B.
13–Sep–18	IN	Huntington	Huntington Muni	8/2778	7/27/18	RNAV (GPS) RWY 27, Orig-A.
13–Sep–18	IN	Huntington	Huntington Muni	8/2779	7/27/18	RNAV (GPS) RWY 9, Orig-A.
13–Sep–18	IN	Huntington	Huntington Muni	8/2780	7/27/18	VOR–A, Amdt 2.
13–Sep–18	MI	Sault Ste Marie	Chippewa County Intl	8/3341	7/27/18	ILS OR LOC RWY 16, Amdt 8C.
13–Sep–18	NJ	Ocean City	Ocean City Muni	8/3634	8/8/18	VOR–A, Orig-B.
13–Sep–18	IA	Muscatine	Muscatine Muni	8/3780	7/27/18	RNAV (GPS) RWY 24, Orig.
13–Sep–18	NY	New York	LaGuardia	8/4505	8/1/18	RNAV (GPS) Y RWY 4, Amdt 3A.
13–Sep–18	NY	New York	LaGuardia	8/4506	8/1/18	VOR RWY 4, Amdt 3C.
13–Sep–18	NY	New York	LaGuardia	8/4511	8/1/18	ILS OR LOC RWY 13, Amdt 2.
13–Sep–18	NY	New York	LaGuardia	8/4513	8/1/18	ILS OR LOC RWY 22, ILS RWY 22 (SA CAT 1–11), Amdt 21A.
13–Sep–18	NY	New York	LaGuardia	8/4514	8/1/18	RNAV (GPS) RWY 13, Orig.
13–Sep–18	NY	New York	LaGuardia	8/4515	8/1/18	RNAV (GPS)-B, Orig-A.
13–Sep–18	NY	New York	LaGuardia	8/4520	8/1/18	LDA–A, Amdt 2D.
13–Sep–18	NY	New York	LaGuardia	8/4521	8/1/18	RNAV (GPS) RWY 31, Amdt 1D.
13–Sep–18	NY	New York	LaGuardia	8/4522	8/1/18	RNAV (GPS) Y RWY 22, Amdt 2D.
13–Sep–18	NY	New York	LaGuardia	8/5663	8/1/18	ILS OR LOC RWY 4, Amdt 37.
13–Sep–18	AK	Nenana	Nenana Muni	8/5674	8/1/18	RNAV (GPS) RWY 4L, Amdt 1.
13–Sep–18	AK	Nenana	Nenana Muni	8/5675	8/1/18	NDB RWY 4L, Amdt 3A.
13–Sep–18	MD	Annapolis	Lee	8/8031	8/2/18	RNAV (GPS)-A, Orig.
13–Sep–18	NY	Le Roy	Le Roy	8/8644	8/2/18	VOR–A, Amdt 1B.
13–Sep–18	OK	Chandler	Chandler Rgnl	8/8927	8/1/18	RNAV (GPS) RWY 17, Orig-A.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 180718671–8671–01]

RIN 0694–AH57

Addition of Certain Entities to the Entity List, Revision of Entries on the Entity List and Removal of Certain Entities From the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by adding fifteen entities under seventeen entries to the Entity List. These fifteen entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States and will be listed on the Entity List under the destinations of the People's Republic of China, Hong Kong, Pakistan, Russia, Saudi Arabia, Turkey, the United Arab Emirates and the United Kingdom. This final rule also modifies two entries on the entity list: One entry under the destination of Hong Kong and one entry under the destination of Russia. Lastly, this final rule removes one entity under the destination of Greece from the Entity List. The removal is the result of a request for removal BIS received pursuant to the EAR and a review of information provided in the removal request.

DATES: This rule is effective September 4, 2018.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (15 CFR, subchapter C, part 744, Supplement No. 4) identifies entities reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The Export Administration Regulations (EAR) (15 CFR, Subchapter C, parts 730–774) imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those listed. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote, and makes all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add fifteen entities under seventeen entries to the Entity List. These fifteen entities are being added based on § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The seventeen entries added to the Entity List consist of two entries located in the People's Republic of China (China), five entries located in Hong Kong, two entries located in Pakistan, one entry located in Russia, one entry located in Saudi Arabia, two entries located in Turkey, three entries located in the United Arab Emirates (U.A.E.), and one entry located in the United Kingdom. There are seventeen entries for the fifteen entities because one entry is listed in three locations, resulting in two additional entries.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these fifteen entities under seventeen entries to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States, along with those acting on behalf of such persons, may be added to the Entity List. Paragraphs (b)(1) through (5) of § 744.11 provide an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The ERC determined that the two entities located in China (Ma Yunong and Seajet Company Limited), as well as one entity located in Hong Kong (ZM International Company Ltd.) have been involved in activities that are contrary to the national security and foreign policy interests of the United States as set forth in § 744.11(b). Specifically, the ERC determined that these parties unlawfully procured and diverted U.S.-origin armored vehicles to the Democratic People's Republic of Korea (North Korea) in violation of the EAR. For the remaining four entities located in Hong Kong (Calvin Law, CLC Holdings Limited, LHI Technology (H.K.) Company Limited, and Ray Hui), the ERC determined that these entities have been involved in activities that are contrary to the national security and foreign policy interests of the United States as set forth in § 744.11(b). These four entities procured U.S.-origin items for reexport to entities in China and other countries without obtaining the necessary license(s).

The ERC determined that the U.A.E.-based company Good Luck Shipping LLC has been involved in activities contrary to the national security and foreign policy interests of the United States as set forth in § 744.11(b) of the EAR; this entity has transshipped U.S.-origin items to sanctioned destinations without the required authorizations. The ERC determined that Technology Links Pvt. Ltd., located in Pakistan, be added to the Entity List based on the company's involvement in the supply of items subject to the EAR to nuclear and missile-related Entity List parties in Pakistan without the license required under § 744.11 of the EAR. In addition, the ERC determined that Techcare Services FZ LLC, located in the U.A.E., and UEC (Pvt.) Ltd., located in Pakistan, Saudi Arabia and the U.A.E., made multiple attempts to acquire U.S.-origin commodities ultimately destined for Pakistan's unsafeguarded nuclear program and have provided false and misleading information to BIS during an end-use check.

The ERC also determined that the two entities located in Turkey, Huseyin Engin Borluca and 3K Aviation Consulting and Logistics, along with Evans Meridians Ltd., located in the British Virgin Islands, have engaged in transactions in violation of the U.S. embargo against Iran by transferring, or attempting to transfer, U.S.-origin

aircraft engines to an Iranian customer without the required authorizations. Lastly, the ERC determined that the Joint Stock Company (JSC) NIIME be added to the Entity List under the destination of Russia. JSC NIIME operates as the de facto research and development branch of PJSC Mikron, a listed entity on the Entity List. Prior review of exports, reexports and transfers (in-country) involving JSC NIIME will enhance BIS's ability to prevent violations of the EAR.

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of these fifteen entities raises sufficient concern that prior review of exports, reexports or transfers (in-country) of all items subject to the EAR involving these entities, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR.

For the fifteen entities under seventeen entries added to the Entity List, BIS imposes a license requirement for all items subject to the EAR, and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the entities or in which such entities act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the entities being added to the Entity List in this rule. The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters and transferors in identifying entities on the Entity List.

This final rule adds the following fifteen entities under seventeen entries to the Entity List:

China

(1) *Ma Yunong,* a.k.a., the following one alias:

—George Ma.

B–804 SOHO New Town, 88 Jianguo Road, Chaoyang District, Beijing, 100022, China; *and* Room 1002, LT Square, No. 500, Chengdu North Road, Shanghai, 200003, China; *and* Unit 1906–2, West Tower, Fortune Plaza, No. 114, Tiyu Dong Rd, Tianhe District, Guangzhou 510620, China; *and*

(2) *Seajet Company Limited,*

B–804 SOHO New Town, 88 Jianguo Road, Chaoyang District, Beijing, 100022, China; *and* Room 1002, LT Square, No. 500, Chengdu North Road, Shanghai, 200003, China; *and* Unit 1906–2, West Tower, Fortune Plaza, No. 114, Tiyu Dong Rd, Tianhe District, Guangzhou 510620, China; *and* No. 2, Juhe 6 Street, Jufuyuan, Business Development Tongzhou Di, Beijing, China; *and* Room 2, A316 Haidin 9 Road, Tianjin, Port Free Trade Zone, Tianjin, China.

Hong Kong

(1) *Calvin Law,*

Flat 2808, 28/F, Asia Trade Centre, 79 Lei Muk Road, Kwai Chung, N.T., Hong Kong; *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong;

(2) *CLC Holdings Limited,* a.k.a., the following one alias:

—CLC Xpress.

Flat 2808, 28/F, Asia Trade Centre, 79 Lei Muk Road, Kwai Chung, N.T., Hong Kong; *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong;

(3) *LHI Technology (H.K.) Company Limited,*

Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong;

(4) *Ray Hui,*

Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, N.T., Hong Kong; *and*

(5) *ZM International Company Ltd.,*

4/F Enterprise Bldg 228–238, Queen's Road Central, Hong Kong; *and* Room C, 22/F, 235 Wing Lok Street, Trade Centre, Sheung Wan, Hong Kong.

Pakistan

(1) *Technology Links Pvt. Ltd.,* a.k.a., the following two aliases:

—Techlinks; *and*

—Techlink Communications.

4/10–11–12 Rimpa Plaza, M.A. Jinnah Road, Karachi, Pakistan; *and* Suite 3, 2nd Floor, Kashmir Center, 632/G–1 Market Johar Town Lahore, Paksitan; *and* 111B Block No.2, Mezzanine Floor, Khalid bin Waleed Road, P.E.C.H.S., Karachi, Pakistan; *and*

(2) *UEC (Pvt.) Ltd.,*

29–M, Civic Centre, Model Town Ext. Lahore-43700, Pakistan; *and* Office No. 610, 6th Floor, Progressive Centre, 30–A, Block No. 6, P.E.C.H.S., Karachi, Pakistan (See alternate addresses under Saudi Arabia and U.A.E.).

Russia

(1) *Joint Stock Company (JSC) NIIME,* a.k.a., the following two aliases:

—Aktsionernoe Obshchestvo (AO) Nauchnoisledovatelskiy Institut Molekulyarnoy Elektroniki (NIIME); *and*

—Molecular Electronics Research Institute (MERI).

1st Zapadniy Proezd 12/1, Zelenograd, Russia, 124460.

Saudi Arabia

(1) *UEC (Pvt.) Ltd.,*

P.O. Box 245221, Riyadh 11312, Kingdom of Saudi Arabia (See alternate addresses under Pakistan and U.A.E.).

Turkey

(1) *3K Aviation Consulting and Logistics,* a.k.a., the following one alias:

—3K Havacilik ve Danismanlik SAN. TIC. LTD. ST.

Biniciler Apt. Savas Cad. No. 18/5, Sirinyali Mah. 07160, Antalya, Turkey; *and* Sonmez Apt. No. 4/5 1523 Sokak, Sirinyali Mah. 07160, Antalya, Turkey; *and*

(2) *Huseyin Engin Borluca,*

Biniciler Apt. Savas Cad. No. 18/5, Sirinyali Mah. 07160, Antalya, Turkey; *and* Sonmez Apt. No. 4/5 1523 Sokak, Sirinyali Mah. 07160, Antalya, Turkey.

United Arab Emirates

(1) *Good Luck Shipping LLC,* a.k.a., the following two aliases:

—Good Luck Shipping Services; *and*

—GLS.

Office 206/207 Malik Saeed, Ahmad Ghabbash, Bur Dubai, UAE; *and* P.O. Box 8486, Dubai, UAE; *and* PO Box 5562, Dubai, UAE;

(2) *Techcare Services FZ LLC,*

No. 1, Ground Floor Office 8/D, P.O. Box 312391, Al-Jazeera Al Hamra, UAE; *and*

(3) *UEC (Pvt.) Ltd.,*

P.O. Box 97, Abu Dhabi, UAE (See alternate addresses under Pakistan and Saudi Arabia).

United Kingdom

(1) *Evans Meridians Ltd.,*

Drake Chambers, 1st Floor Yamraj Building, P.O. Box 3321, Road Town, Tortola, British Virgin Islands.

Modifications to the Entity List

This final rule implements the decision of the ERC to modify two existing entries on the Entity List under the destination of Hong Kong and Russia. BIS is revising the entry for Joinus Freight Systems (H.K.) Ltd. by adding an additional alias and address and modifying the entity name and an existing address. In addition, the ERC determined, with the addition of JSC NIIME to the Entity List, the existing entry for ''Joint Stock Company Mikron'' be revised by modifying the entity name to ''PJSC Mikron'' and removing its alias.

This final rule makes the following modifications to two entries on the Entity List:

Hong Kong

(1) *Joinus Freight Systems (H.K.) Limited,* a.k.a., the following two aliases:

—JFS Global Logistics; *and*

—Joinus Freight Systems Global Logistics Limited.

Unit 07–07, 25F, Tower B, Regent Centre, 63 Wo Yi Hop Road, Kwai Chung, N.T. Hong Kong *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong.

Russia

(1) *PJSC Mikron,*

1st Zapadniy Proezd 12/1, Zelenograd, Russia, 124460.

Removal From the Entity List

This rule implements a decision of the ERC to remove the following entry from the Entity List on the basis of a removal request BIS received: Top Electronics Components S.A., located in Greece. This entry was added to the Entity List on October 9, 2012 (77 FR 61256). The ERC decided to remove this entry based on information BIS received pursuant to § 744.16 of the EAR and the additional review the ERC conducted.

This final rule implements the decision to remove the following one entity located in Greece from the Entity List:

Greece

(1) *Top Electronics Components S.A.,*

66 Alkminis & Aristovoulov Str, Kato Petralona, Athens, Greece 11853.

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 en route aboard a carrier to a port of export or reexport, on September 4, 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).

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.

Rulemaking Requirements

1. 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, 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. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor 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 collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, 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.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. For the fifteen entities under seventeen entries added to the Entity List in this final rule, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation and a 30-day delay in effective date are inapplicable, because this regulation involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)). BIS implementation of this rule is necessary to protect U.S. national security or foreign policy interests by preventing items subject to the EAR from being exported, reexported, or transferred (in-country) to the entities being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, the entities being added to the Entity List by this action would continue to be able to receive items subject to the EAR without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these entities notice of the U.S. Government's intention to place them on the Entity List, which could create an incentive for them to accelerate their receipt of items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, including taking steps to set up additional aliases, change addresses, and engaging in other measures to try to limit the impact of the listing on the Entity List once a final rule is published.

5. For the one entity removed from the Entity List in this final rule, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because it would be contrary to the public interest. In determining whether to grant a request for removal from the Entity List, a committee of U.S. Government agencies (the End-User Review Committee (ERC)) evaluates information about and commitments made by listed entities requesting removal from the Entity List, the nature and terms of which are set

forth in 15 CFR part 744, Supplement No. 5, as noted in 15 CFR 744.16(b). The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (72 FR 31005 (June 5, 2007) (proposed rule), and 73 FR 49311 (August 21, 2008) (final rule)). The removal has been made within the established regulatory framework of the Entity List. If the rule were to be delayed to allow for public comment, U.S. exporters may face unnecessary economic losses as they turn away potential sales to the entities removed by this rule because the customer remained a listed entity on the Entity List even after the ERC approved the removal pursuant to the rule published at 73 FR 49311 on August 21, 2008. By publishing without prior notice and comment, BIS allows the applicant whose removal has been approved by the ERC to receive U.S. exports immediately, subject to any other potential license requirements that may apply under provisions of the EAR other than the Entity List).

Removals from the Entity List involve interagency deliberation and result from review of public and non-public sources, including, where applicable, sensitive law enforcement information and classified information, and the measurement of such information against the Entity List removal criteria. This information is extensively reviewed according to the criteria for evaluating removal requests from the Entity List, as set out in 15 CFR part 744, Supplement No. 5, and 15 CFR 744.16(b). For reasons of national security, BIS is not at liberty to provide to the public detailed information on which the ERC relied to make the decisions to remove these entities. In addition, the information included in the removal request is information exchanged between the applicant and the ERC, which by law (section 12(c) of the Export Administration Act of 1979), BIS is restricted from sharing with the public. Moreover, removal requests from the Entity List contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such requests.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(1) because this rule is a substantive rule that relieves a restriction. This rule's removal of one entity from the Entity List removes requirements (the Entity-List-based license requirement and limitation on use of license exceptions) on this entity. The rule does not impose a requirement on any other person for these removals from the Entity List. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule.

6. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the APA regarding notice of proposed rulemaking, the opportunity for public comment, and a 30-day delay in effective date for the modifications included in this rule because, as described above, they are impracticable and are contrary to the public interest. In addition, the changes are limited to providing additional information that will assist the public in more easily identifying the listed entities on the Entity List.

7. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, 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 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for part 744 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.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2017, 82 FR 43825 (September 19, 2017); Notice of November 6, 2017, 82 FR 51971 (November 8, 2017); Notice of January 17, 2018, 83 FR 2731 (January 18, 2018); Notice of August 8, 2018, 83 FR 39871 (August 13, 2018).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. Under China, the People's Republic of, by adding in alphabetical order two Chinese entities ''Ma Yunong'' and ''Seajet Company Limited'';

■ b. Under Greece, by removing one Greek entity, ''Top Electronics Components S.A., 66 Alkminis & Aristovoulov Str, Kato Petralona, Athens, Greece 11853'';

■ c. Under Hong Kong:

■ i. By adding in alphabetical order entities ''Calvin Law'' and ''CLC Holdings Limited'';

■ ii. By revising entity''Joinus Freight Systems (H.K.) Limited''; and

■ iii. By adding in alphabetical order entities ''LHI Technology (H.K.) Company Limited,'' ''Rau Hui,'' and ''ZM International Company Ltd.'';

■ d. Under Pakistan, by adding in alphabetical order two Pakistani entities ''Technology Links PVT. Ltd.'';

■ e. Under Russia,

■ i. By revising entity ''Joint Stock Company Mikron''; and

■ ii. By adding in alphabetical order one entity ''RJSC Mikron'';

■ f. By adding in alphabetical order a heading for Saudi Arabia and one Saudi Arabian entity ''UEC (Pvt.) Ltd.'';

■ g. Under Turkey, by adding in alphanumerical order two Turkish entities 3K Aviation Consulting and Logistics'' and ''Huseyin Engin Borluca'';

■ h. Under the United Arab Emirates, by adding in alphabetical order three Emirati entities ''Good Luck Shipping LLC,'' Techare Sevices FZ LLC,'' and ''UEC (Pvt.) Ltd.''; and

■ i. Under the United Kingdom, by adding in alphabetical order one British entity ''Evans Meridians Ltd.''.

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
*	* * *	* *	*	*
	* * * * * * *			
CHINA, PEOPLE'S REPUBLIC OF	Ma Yunong, a.k.a., the following one alias: —George Ma. B–804 SOHO New Town, 88 Jianguo Road, Chaoyang District, Beijing, 100022, China; *and* Room 1002, LT Square, No. 500, Chengdu North Road, Shanghai, 200003, China; *and* Unit 1906–2, West Tower, Fortune Plaza, No. 114, Tiyu Dong Rd, Tianhe District, Guangzhou 510620, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	Seajet Company Limited, B–804 SOHO New Town, 88 Jianguo Road, Chaoyang District, Beijing, 100022, China; *and* Room 1002, LT Square, No. 500, Chengdu North Road, Shanghai, 200003, China; *and* Unit 1906–2, West Tower, Fortune Plaza, No. 114, Tiyu Dong Rd, Tianhe District, Guangzhou 510620, China; *and* No. 2, Juhe 6 Street, Jufuyuan, Business Development Tongzhou Di, Beijing, China; *and* Room 2, A316 Haidin 9 Road, Tianjin, Port Free Trade Zone, Tianjin, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
*	* * *	* *	*	*
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HONG KONG	Calvin Law, Flat 2808, 28/F, Asia Trade Centre, 79 Lei Muk Road, Kwai Chung, N.T., Hong Kong; *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	CLC Holdings Limited, a.k.a., the following one alias: —CLC Xpress Flat 2808, 28/F, Asia Trade Centre, 79 Lei Muk Road, Kwai Chung, N.T., Hong Kong; *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	Joinus Freight Systems (H.K.) Limited, a.k.a., the following two aliases: —JFS Global Logistics; *and* —Joinus Freight Systems Global Logistics Limited Unit 07–07, 25F, Tower B, Regent Centre, 63 Wo Yi Hop Road, Kwai Chung, N.T. Hong Kong *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			

Country	Entity	License requirement	License review policy	**Federal Register** citation
	LHI Technology (H.K.) Company Limited, Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	Ray Hui, Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, N.T., Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	ZM International Company Ltd., 4/F Enterprise Bldg 228–238, Queen's Road Central, Hong Kong; *and* Room C, 22/F, 235 Wing Lok Street, Trade Centre, Sheung Wan, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
* * * * * * *				
PAKISTAN				
	* * * * * * *			
	Technology Links Pvt. Ltd., a.k.a., the following two aliases: —Techlinks; *and* —Techlink Communications 4/10–11–12 Rimpa Plaza, M.A. Jinnah Road, Karachi, Pakistan; *and* Suite 3, 2nd Floor, Kashmir Center, 632/G–1 Market Johar Town, Lahore, Pakistan; *and* 111B Block No.2, Mezzanine Floor, Khalid bin Waleed Road, P.E.C.H.S., Karachi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	—UEC (Pvt.) Ltd., 29–M, Civic Centre, Model Town Ext. Lahore-43700, Pakistan; *and* Office No. 610, 6th Floor, Progressive Centre, 30–A, Block No. 6, P.E.C.H.S., Karachi, Pakistan (See alternate addresses under Saudi Arabia and U.A.E.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
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RUSSIA				
	* * * * * * *			
	Joint Stock Company (JSC) NIIME, a.k.a., the following two aliases: —Aktsionernoe Obshchestvo (AO) Nauchnoisledovatelskiy Institut Molekulyarnoy Elektroniki (NIIME); *and* —Molecular Electronics Research Institute (MERI) 1st Zapadniy Proezd 12/1, Zelenograd, Russia, 124460	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	PJSC Mikron, 1st Zapadniy Proezd 12/1, Zelenograd, Russia, 124460	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].

Country	Entity	License requirement	License review policy	Federal Register citation
	* * * * * * *			
SAUDI ARABIA	UEC (Pvt.) Ltd., P.O. Box 245221, Riyadh 11312, Kingdom of Saudi Arabia (See alternate addresses under Pakistan and U.A.E.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
* * * * * * *				
TURKEY	3K Aviation Consulting and Logistics, a.k.a., the following one alias: —3K Havacilik ve Danismanlik SAN. TIC. LTD. ST Biniciler Apt. Savas Cad. No. 18/5, Sirinyali Mah. 07160, Antalya, Turkey; *and* Sonmez Apt. No. 4/5 1523 Sokak, Sirinyali Mah. 07160, Antalya, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR.).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	Huseyin Engin Borluca, Biniciler Apt. Savas Cad. No. 18/5, Sirinyali Mah. 07160, Antalya, Turkey; *and* Sonmez Apt. No. 4/5 1523 Sokak, Sirinyali Mah. 07160, Antalya, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR.).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
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UNITED ARAB EMIRATES	Good Luck Shipping LLC, a.k.a., as the following two aliases: —Good Luck Shipping Services; and —GLS Office 206/207 Malik Saeed, Ahmad Ghabbash, Bur Dubai, UAE; *and* P.O. Box 8486, Dubai, UAE; PO Box 5562, Dubai, UAE.	For all items subject to the EAR. (See § 744.11 of the EAR.).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	Techcare Services FZ LLC, No. 1, Ground Floor Office 8/D, P.O. Box 312391, Al-Jazeera Al Hamra, UAE	For all items subject to the EAR. (See § 744.11 of the EAR.).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
	UEC (Pvt.) Ltd., ... P.O. Box 97, Abu Dhabi, UAE (See alternate addresses under Pakistan and Saudi Arabia)	For all items subject to the EAR. (See § 744.11 of the EAR.).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER9/4/2018].
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UNITED KINGDOM	Evans Meridians Ltd., Drake Chambers, 1st Floor Yamraj Building, PO Box 3321, Road Town, Tortola, British Virgin Islands	For all items subject to the EAR. (See § 744.11 of the EAR.).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER 9/4/2018].
	* * * * * * *			
* * * * * * *				

Dated: August 24, 2018.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2018–18766 Filed 8–31–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2018–0798]

Special Local Regulation; Olympia Harbor Days Tug Boat Races, Budd Inlet, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Special Local Regulations for the Olympia Harbor Days Tug Boat Races, Budd Inlet, WA, from 11 a.m. through 4 p.m. on September 2, 2018. This action is necessary to limit vessel movement within the specified race area immediately prior to, during, and immediately after racing activity in order to ensure the safety of participants, spectators and the maritime public. Entry into, transit through, mooring, or anchoring within the specified race area is prohibited unless authorized by the Captain of the Port Puget Sound or Designated Representatives.

DATES: The regulations in 33 CFR 100.1309 will be enforced from 11 a.m. through 4 p.m. on September 2, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Special Local Regulations for Olympia Harbor Days Tug Boat Races, Budd Inlet, WA in 33 CFR 100.1309 on September 2, 2018, from 11 a.m. until 4 p.m.

The boundaries of the race area, as specified in 33 CFR 100.1309(a), enclose approximately 2 nautical miles of the navigable waters in Budd Inlet south of Big Tykle Cove to west of Priest Point.

Under the provisions of 33 CFR 100.1309, the regulated area shall be closed immediately prior to, during, and immediately after the event to all persons and vessels not participating in the event and authorized by the event sponsor. This action is necessary to ensure the safety of participants, spectators, and the maritime public. Entry into, transit through, mooring or anchoring within the specified race area is prohibited unless authorized by the Captain of the Port Puget Sound or Designated Representatives. All persons or vessels who desire to enter the race area while it is enforced must obtain permission from the on-scene patrol craft on VHF channel 13.

In addition to this published document, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: August 28, 2018.

Linda A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2018–19081 Filed 8–31–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0598]

RIN 1625–AA00

Safety Zone, Swim Around Charleston; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The temporary moving safety zone is necessary to protect swimmers, participant vessels, spectators, and the general public during the event. Persons and vessels will be prohibited from entering the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 7:45 a.m. until 2 p.m. on September 16, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0598 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 Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Justin.C.Heck@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 April 9, 2018, Kathleen Wilson notified the Coast Guard that she will be sponsoring the Swim Around Charleston on September 16, 2018 which will impact waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina. In response, on June 26, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone, Swim Around Charleston; Charleston, SC (83 FR 29719). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this event. During the comment period that ended July 26, 2018, we received one comment.

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 event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) Charleston has determined that potential hazards associated with the large number of participants and spectators during the swim will be a safety concern. The purpose of the rule is to ensure the safety of participants, spectators, the general public, vessels and the navigable waters in the safety zone before, during and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

The Coast Guard received one comment from the public in favor of the rule. We acknowledge this comment. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 7:45 a.m. until 2 p.m. on September 16, 2018. The safety zone will cover certain navigable waters on the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina. The duration of the zone is intended to ensure the safety of the participants, spectators, and the general public. No vessel or person will be permitted to enter, transit through, anchor in or remain within the safety zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

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: (1) The safety zone will be enforced for only seven hours; (2) the safety zone will move with the participant vessels so that once the swimmers clear a portion of the waterway, the safety zone will no longer be enforced in that portion of the waterway; (3) although persons and vessels will not be able to enter or transit through the safety zone without authorization from the COTP or a designated representative, they will be able to operate in the surrounding area during the enforcement period; (4) persons and vessels will still be able to enter or transit through the safety zone if authorized by the COTP or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Broadcast Notice to Mariners, or by on-scene designated representatives.

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 received no 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 Order13132.

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 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 safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area surrounding the participants on the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina during the event lasting less than 7 hours. 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 part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T07–0598 to read as follows:

§ 165.T07–0598 Safety Zone; Swim Around Charleston, Charleston, SC.

(a) *Regulated area.* The following regulated area is a moving safety zone: All waters 50 yards in front of the lead safety vessel preceding the first race participants, 50 yards behind the safety vessel trailing the last race participants, and at all times extend 100 yards on either side of safety vessels. The Swim Around Charleston swimming race consists of a 12 mile course that starts at Remley's Point on the Wando River in approximate position 32°48′49″ N, 79°54′27″ W, crosses the main shipping channel under the main span of the Ravenel Bridge, and finishes at the I–526 bridge and boat landing on the Ashley River in approximate position 32°50′14″ N, 80°01′23″ W. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, ''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 in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in the Swim Around Charleston, or serving as safety vessels.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP by telephone at (843)740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on September 16, 2018 from 7:45 a.m. until 2 p.m.

Dated: August 27, 2018.

J.W. Reed,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2018–19078 Filed 8–31–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0175]

Safety Zone, Coast Guard Exercise Area, Hood Canal, Washington

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zones surrounding vessels involved in Coast Guard training exercises in Hood Canal, WA from October 22 through 26, 2018. This enforcement is necessary to ensure the safety of the maritime public and vessels near these exercises. During the enforcement period, entry into the safety zones is prohibited unless authorized by the Captain of the Port or her Designated Representative.

DATES: The regulations in 33 CFR 165.1339 will be enforced from 8 a.m. on October 22, 2018, through 5 p.m. on October 26, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones around vessels involved in Coast Guard training exercises in Hood Canal, WA set forth in 33 CFR 165.1339, from 8 a.m. on October 22, 2018, through 5 p.m. on October 26, 2018. Under the provisions of 33 CFR 165.1339, no person or vessel may enter or remain within 500 yards of any vessel involved in Coast Guard training exercises while such vessel is transiting Hood Canal, WA, between Foul Weather Bluff and the entrance to Dabob Bay, unless authorized by the Captain of the Port or her Designated Representative. In addition, the regulation requires all vessels to obtain permission for entry during the enforcement period by contacting the on-scene patrol commander on VHF channel 13 or 16, or the Sector Puget Sound Joint Harbor Operations Center at 206–217–6001. Members of the maritime public will be able to identify participating vessels as those flying the Coast Guard Ensign. The Captain of the Port may also be assisted in the enforcement of the zone by other federal, state, or local agencies. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

Dated: August 28, 2018.

Linda A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2018–19082 Filed 8–31–18; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 6, 7, 14, 20, 64, and 68

[EB Docket No. 17–245; FCC 18–96]

Formal Complaint Proceedings to the Enforcement Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) considers creating a uniform set of procedural rules for formal complaint proceedings delegated to the Enforcement Bureau and currently handled by its Market Disputes Resolution Division and Telecommunications Consumers Division. This document streamlines and consolidates the procedural rules governing formal complaints filed under section 208 of the Communications Act of 1934, as amended (Act); pole attachment complaints filed under section 224 of the Act; and formal advanced communications services and equipment complaints filed under sections 255, 716, and 718 of the Act.

DATES: Effective October 4, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Engel, Federal Communications Commission Enforcement Bureau, Market Disputes Resolution Division, at (202) 418–7330.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in EB Docket No. 17–245, FCC 18–96 adopted July 12, 2018 and released July 18, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It also is available on the Commission's website at *https://apps.fcc.gov/edocs_public/.* On September 13, 2017, the Commission adopted a Notice of Proposed Rulemaking (NPRM) proposing and seeking comment on revisions to formal complaint procedures. The NPRM was published in the **Federal Register** on September 26, 2017 (82 FR 44755). Specifically, the NPRM proposed to streamline and consolidate the procedural rules governing formal complaints filed under Section 208 of the Act; pole attachment complaints filed under Section 224 of the Act; and formal advanced communications services and equipment complaints filed under Sections 255, 716, and 718 of the Act.

Paperwork Reduction Act

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, we have assessed the effects of this rule and find that any burden on small businesses will be minimal because the rules streamline the formal complaint process and reduce burdens on all parties.

Congressional Review Act

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

List of Subjects in 47 CFR Parts 1, 6, 7, 14, 20, 64, and 68

Common carriers, Communications, Telecommunications, Telephone.

Federal Communications Commission

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in this preamble, the Federal Communications Commission amends 47 CFR parts 1, 6, 7, 14, 20, 64, and 68 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455, unless otherwise noted.

■ 2. Amend § 1.47 by revising paragraph (d) to read as follows:

§ 1.47 Service of documents and proof of service.

* * * * *

(d) Except in formal complaint proceedings against common carriers under §§ 1.720 through 1.740 of this chapter, documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. Documents that are required to be served must be served in paper form, even if documents are filed in electronic form with the Commission, unless the party to be served agrees to accept service in some other form.

* * * * *

■ 3. Amend § 1.49 by revising paragraph (f)(1)(i) to read as follows:

§ 1.49 Specifications as to pleadings and documents.

* * * * *

(f) * * *

(1) * * *

(i) Formal complaint proceedings under section 208 of the Act and rules in §§ 1.720 through 1.740, and pole attachment complaint proceedings under section 224 of the Act and rules in §§ 1.1401 through 1.1415;

* * * * *

■ 4. Revise § 1.717 to read as follows:

§ 1.717 Procedure.

The Commission will forward informal complaints to the appropriate carrier for investigation and may set a due date for the carrier to provide a written response to the informal complaint to the Commission, with a copy to the complainant. The response will advise the Commission of the carrier's satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the carrier's response or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed. In all other cases, the Commission will notify the complainant that if the complainant is not satisfied by the carrier's response, or if the carrier has failed to submit a response by the due date, the complainant may file a formal complaint in accordance with § 1.721.

■ 5. Revise § 1.718 to read as follows:

§ 1.718 Unsatisfied informal complaints; formal complaints relating back to the filing dates of informal complaints.

When an informal complaint has not been satisfied pursuant to § 1.717, the complainant may file a formal complaint with this Commission in the form specified in § 1.721. Such filing will be deemed to relate back to the filing date of the informal complaint: *Provided,* That the formal complaint: Is filed within 6 months from the date of the carrier's response, or if no response

has been filed, within 6 months of the due date for the response; makes reference to the date of the informal complaint, and is based on the same cause of action as the informal complaint. If no formal complaint is filed within the 6-month period, the informal complaint proceeding will be closed.

■ 6. Amend the table of contents of part 1 by revising the section headings of §§ 1.720 through 1.736, and adding section headings for §§ 1.737 through 1.740, to read as follows:

* * * * *

Sec.

* * * * *

■ 7. Revise §§ 1.720 through 1.736 to read as follows:

§ 1.720 Purpose.

The following procedural rules apply to formal complaint proceedings under 47 U.S.C. 208, pole attachment complaint proceedings under 47 U.S.C. 224, and advanced communications services and equipment formal complaint proceedings under 47 U.S.C. 255, 617, and 619, and part 14 of this chapter. Additional rules relevant only to pole attachment complaint proceedings are provided in subpart J of this part.

§ 1.721 General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record. The Commission may also require or permit other written submissions such as briefs, proposed findings of fact and conclusions of law, or other supplementary documents or pleadings.

(a) All papers filed in any proceeding subject to this part must be drawn in conformity with the requirements of §§ 1.49, 1.50, and 1.52.

(b) Pleadings must be clear, concise, and direct. All matters concerning a claim, defense or requested remedy, including damages, should be pleaded fully and with specificity.

(c) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or a Commission regulation or order, or a defense to an alleged violation.

(d) Averred facts, claims, or defenses shall be made in numbered paragraphs and must be supported by relevant evidence. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth. Assertions based on information and belief are prohibited unless made in good faith and accompanied by a declaration or affidavit explaining the basis for the party's belief and why the party could not reasonably ascertain the facts from any other source.

(e) Legal arguments must be supported by appropriate statutory, judicial, or administrative authority.

(f) Opposing authorities must be distinguished.

(g) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies. In addition, copies of state authorities relied upon shall be provided.

(h) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner before a decision is rendered on the merits of the complaint.

(i) Specific reference shall be made to any tariff or contract provision relied on in support of a claim or defense. Copies of relevant tariffs, contracts, or relevant portions that are referred to or relied upon in a complaint, answer, or other pleading shall be appended to such pleading.

(j) Pleadings shall identify the name, address, telephone number, and email address for either the filing party's attorney or, where a party is not represented by an attorney, the filing party. Pleadings may be signed by a party's attorney.

(k) All attachments shall be Bates-stamped or otherwise numbered sequentially. Parties shall cite to Bates-stamped page numbers in their pleadings.

(l) Pleadings shall be served on all parties to the proceeding in accordance with § 1.734 and shall include a certificate of service.

(m) Each pleading or other submission must contain a written verification that the signatory has read the submission and, to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding. If any pleading or other submission is signed in violation of this provision, the Commission may upon motion or upon its own initiative impose appropriate sanctions.

(n) Parties may petition the staff, pursuant to § 1.3, for a waiver of any of the rules governing formal complaints. Such waiver may be granted for good cause shown.

(o) A complaint may, on request of the filing party, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the complaint. A request for the return of an initiating document will be regarded as a request for dismissal.

(p) Amendments or supplements to complaints to add new claims or requests for relief are prohibited.

(q) Failure to prosecute a complaint will be cause for dismissal.

(r) Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act, or a Commission regulation or order, will be dismissed. In such case, any amendment or supplement to such document will be considered a new filing which must be made within any applicable statutory limitations of actions.

(s) Any other pleading that does not conform with the requirements of the applicable rules may be deemed defective. In such case the Commission may strike the pleading or request that specified defects be corrected and that

proper pleadings be filed with the Commission and served on all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

(t) Pleadings shall be construed so as to do justice.

(u) Any party that fails to respond to official correspondence, a request for additional information, or an order or directive from the Commission may be subject to appropriate sanctions.

§ 1.722 Format and content of complaints.

A formal complaint shall contain:

(a) The name of each complainant and defendant;

(b) The occupation, address and telephone number of each complainant and, to the extent known, each defendant;

(c) The name, address, telephone number, and email address of complainant's attorney, if represented by counsel;

(d) Citation to the section of the Communications Act or Commission regulation or order alleged to have been violated; each such alleged violation shall be stated in a separate count;

(e) Legal analysis relevant to the claims and arguments set forth therein;

(f) The relief sought, including recovery of damages and the amount of damages claimed, if known;

(g) Certification that the complainant has, in good faith, discussed or attempted to discuss the possibility of settlement with each defendant prior to the filing of the formal complaint. In disputes between businesses, associations, or other organizations, the certification shall include a statement that the complainant has engaged or attempted to engage in executive-level discussions concerning the possibility of settlement. Executive-level discussions are discussions among representatives of the parties who have sufficient authority to make binding decisions on behalf of the entity they represent regarding the subject matter of the discussions. Such certification shall include a statement that, prior to the filing of the complaint, the complainant notified each defendant in writing of the allegations that form the basis of the complaint and invited a response within a reasonable period of time. A refusal by a defendant to engage in discussions contemplated by this rule may constitute an unreasonable practice under the Act. The certification shall also include a brief summary of all additional steps taken to resolve the dispute prior to the filing of the formal complaint;

(h) A statement explaining whether a separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or same set of facts, in whole or in part, or whether the complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment rulemaking proceeding that is concurrently before the Commission;

(i) An information designation containing:

(1) The name and, if known, the address and telephone number of each individual likely to have information relevant to the proceeding, along with the subjects of that information, excluding individuals otherwise identified in the complaint or exhibits thereto, and individuals employed by another party; and

(2) A copy—or a description by category and location—of all relevant documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control, excluding documents submitted with the complaint.

(j) A completed Formal Complaint Intake Form;

(k) A declaration, under penalty of perjury, by the complainant or complainant's counsel describing the amount, method, and date of the complainant's payment of the filing fee required under § 1.1106 and the complainant's 10-digit FCC Registration Number, as required by subpart W of this part. Submission of a complaint without the FCC Registration Number will result in dismissal of the complaint.

§ 1.723 Damages.

(a) If a complainant in a formal complaint proceeding wishes to recover damages, the complaint must contain a clear and unequivocal request for damages.

(b) In all cases in which recovery of damages is sought, the complaint must include either:

(1) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to prove the amount of such damages; or

(2) If any information not in the possession of the complainant is necessary to develop a detailed computation of damages, an explanation of:

(i) Why such information is unavailable to the complaining party;

(ii) The factual basis the complainant has for believing that such evidence of damages exists; and

(iii) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

(c) If a complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the complainant must:

(1) Comply with paragraph (a) of this section, and

(2) State clearly and unequivocally that the complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief will be made.

(d) If the Commission decides that a determination of damages would best be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the Commission may at any time bifurcate the case and order that the initial proceeding will determine only liability and prospective relief, and that a separate, subsequent proceeding initiated in accordance with paragraph (e) of this section will determine damages.

(e) If a complainant exercises its right under paragraph (c) of this section, or the Commission invokes its authority under paragraph (d) of this section, the complainant may initiate a separate proceeding to obtain a determination of damages by filing a supplemental complaint within sixty days after public notice (as defined in § 1.4(b)) of a decision that contains a finding of liability on the merits of the original complaint. Supplemental complaints filed pursuant to this section need not comply with the requirements in §§ 1.721(c) or 1.722(d), (g), (h), (j), and (k). The supplemental complaint shall be deemed, for statutory limitations purposes, to relate back to the date of the original complaint.

(f) The Commission may, in its discretion, order the defendant either to post a bond for, or deposit into an interest bearing escrow account, a sum equal to the amount of damages which the Commission finds, upon preliminary investigation, is likely to be ordered after the issue of damages is fully litigated, or some lesser sum which may be appropriate, provided the Commission finds that the grant of this relief is favored on balance upon consideration of the following factors:

(1) The complainant's potential irreparable injury in the absence of such deposit;

(2) The extent to which damages can be accurately calculated;

(3) The balance of the hardships between the complainant and the defendant; and

(4) Whether public interest considerations favor the posting of the bond or ordering of the deposit.

(g) The Commission may, in its discretion, end adjudication of damages by adopting a damages computation method or formula. In such cases, the parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated method or formula. Within 30 days of the release date of the damages order, parties shall submit jointly to the Commission either:

(1) A statement detailing the parties' agreement as to the amount of damages;

(2) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(3) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(h) In any proceeding to which no statutory deadline applies, the Commission may, in its discretion, suspend ongoing damages proceedings to provide the parties with time to pursue settlement negotiations or mediation under § 1.737.

§ 1.724 Complaints governed by section 208(b)(1) of the Act.

(a) Any party that intends to file a complaint subject to the 5-month deadline in 47 U.S.C. 208(b)(1) must comply with the pre-complaint procedures below. The Enforcement Bureau's Market Disputes Resolution Division will not process complaints subject to the 5-month deadline unless the filer complies with these procedures.

(b) A party seeking to file a complaint subject to 47 U.S.C. 208(b)(1) shall notify the Chief of the Market Disputes Resolution Division in writing of its intent to file the complaint, and provide a copy of the letter to the defendant. Commission staff will convene a conference with both parties as soon as practicable. During that conference, the staff may discuss, among other things:

(1) Scheduling in the case;

(2) Narrowing factual and legal issues in dispute;

(3) Information exchange and discovery necessary to adjudicate the dispute;

(4) Entry of a protective order governing confidential material; and

(5) Preparation for and scheduling a mandatory settlement negotiation session at the Commission.

(c) Staff will endeavor to complete the pre-complaint process as expeditiously as possible. Staff may direct the parties to exchange relevant information during the pre-complaint period.

§ 1.725 Joinder of complainants and causes of action.

(a) Two or more complainants may join in one complaint if their respective causes of action are against the same defendant and concern substantially the same facts and alleged violation of the Communications Act or Commission regulation or order.

(b) Two or more grounds of complaint involving substantially the same facts may be included in one complaint, but should be separately stated and numbered.

§ 1.726 Answers.

(a) Any defendant upon which a copy of a formal complaint is served shall answer such complaint in the manner prescribed under this section within 30 calendar days of service of the formal complaint by the complainant, unless otherwise directed by the Commission.

(b) The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Every effort shall be made to narrow the issues in the answer. The defendant shall state concisely its defense to each claim asserted, admit or deny the averments on which the complainant relies, and state in detail the basis for admitting or denying such averment. General denials are prohibited. Denials based on information and belief are prohibited unless made in good faith and accompanied by a declaration or affidavit explaining the basis for the defendant's belief and why the defendant could not reasonably ascertain the facts from the complainant or any other source. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the defendant shall specify so much of it as is true and shall deny only the remainder. The defendant may deny the allegations of the complaint as specific denials of either designated averments or paragraphs.

(c) The answer shall include legal analysis relevant to the claims and arguments set forth therein.

(d) Averments in a complaint or supplemental complaint filed pursuant to § 1.723(d) are deemed to be admitted when not denied in the answer.

(e) Affirmative defenses to allegations in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (b) of this section.

(f) The answer shall include an information designation containing:

(1) The name and, if known, the address and telephone number of each individual likely to have information relevant to the proceeding, along with the subjects of that information, excluding individuals otherwise identified in the complaint, answer, or exhibits thereto, and individuals employed by another party; and

(2) A copy—or a description by category and location—of all relevant documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control, excluding documents submitted with the complaint or answer.

(g) Failure to file an answer may be deemed an admission of the material facts alleged in the complaint. Any defendant that fails to file and serve an answer within the time and in the manner prescribed by this part may be deemed in default and an order may be entered against such defendant in accordance with the allegations contained in the complaint.

§ 1.727 Cross-complaints and counterclaims.

Cross-complaints seeking any relief within the jurisdiction of the Commission against any party (complainant or defendant) to that proceeding are prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint in accordance with §§ 1.720 through 1.740. For purposes of this subpart, the term ''cross-complaint'' shall include counterclaims.

§ 1.728 Replies.

(a) A complainant shall file and serve a reply within 10 calendar days of service of the answer, unless otherwise directed by the Commission. The reply shall contain statements of relevant, material facts and legal arguments that respond to the factual allegations and legal arguments made by the defendant. Other allegations or arguments will not be considered by the Commission.

(b) Failure to reply will not be deemed an admission of any allegations contained in the responsive pleading, except with respect to any affirmative defense set forth therein. Failure to

reply to an affirmative defense shall be deemed an admission of such affirmative defense and of any facts supporting such affirmative defense that are not specifically contradicted in the complaint.

(c) The reply shall include legal analysis relevant to the claims and arguments set forth therein.

(d) The reply shall include an information designation containing:

(1) The name and, if known, the address and telephone number of each individual likely to have information relevant to the proceeding and addressed in the reply, along with the subjects of that information, excluding individuals otherwise identified in the complaint, answer, reply, or exhibits thereto, and individuals employed by another party; and

(2) A copy—or a description by category and location—of all relevant documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control that are addressed in the reply, excluding documents submitted with the complaint or answer.

§ 1.729 Motions.

(a) A request for a Commission order shall be by written motion, stating with particularity the grounds and authority therefor, including any supporting legal analysis, and setting forth the relief sought.

(b) Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion.

(c) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(d) Motions to dismiss all or part of a complaint are permitted. The filing of a motion to dismiss does not suspend any other filing deadlines under the Commission's rules, unless staff issues an order suspending such deadlines.

(e) Oppositions to motions shall be filed and served within 5 business days after the motion is served. Oppositions shall be limited to the specific issues and allegations contained in the motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting the motion.

(f) No reply may be filed to an opposition to a motion, except under direction of Commission staff.

§ 1.730 Discovery.

(a) A complainant may file with the Commission and serve on a defendant, concurrently with its complaint, up to 10 written interrogatories. A defendant may file with the Commission and serve on a complainant, concurrently with its answer, up to 10 written interrogatories. A complainant may file with the Commission and serve on a defendant, concurrently with its reply, up to five additional written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Interrogatories filed and served pursuant to this procedure may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding. This procedure may not be employed for the purpose of delay, harassment, or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the proceeding.

(b) Interrogatories filed and served pursuant to paragraph (a) of this section shall contain an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) Unless otherwise directed by the Commission, within seven calendar days, a responding party shall file with the Commission and serve on the propounding party any opposition and objections to interrogatories. The grounds for objecting to an interrogatory must be stated with specificity. Unless otherwise directed by the Commission, any interrogatories to which no opposition or objection is raised shall be answered within 20 calendar days.

(d) Commission staff shall rule in writing on the scope of, and schedule for answering, any disputed interrogatories based upon the justification for the interrogatories properly filed and served pursuant to paragraph (a) of this section, and any objections or oppositions thereto, properly filed and served pursuant to paragraph (c) of this section.

(e) Interrogatories shall be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them, and the attorney who objects must sign any objections. The answers shall be filed with the Commission and served on the propounding party.

(f) The Commission, in its discretion, may allow additional discovery, including, but not limited to, document production and/or depositions, and it may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that:

(1) Indexes the documents by useful identifying information; and

(2) Allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) A propounding party asserting that a responding party has provided an inadequate or insufficient response to a discovery request may file a motion to compel within ten days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of § 1.729.

§ 1.731 Confidentiality of information produced or exchanged.

(a) Any information produced in the course of a formal complaint proceeding may be designated as confidential by either party to the proceeding or a third party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9), and under § 0.459 of this chapter. Any party asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a confidential designation is claimed. The party claiming confidentiality should restrict its designations to encompass only the specific information that it asserts is confidential. If a confidential designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the materials designated as confidential fall under the standards for nondisclosure enunciated in the FOIA and that the designation is narrowly tailored to encompass only confidential information.

(2) File with the Commission, using the Commission's Electronic Comment Filing System, a public version of the materials that redacts any confidential information and clearly marks each page of the redacted public version with a header stating ''Public Version.'' The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is

confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(3) File with the Secretary's Office an unredacted hard copy version of the materials that contains the confidential information and clearly marks each page of the unredacted confidential version with a header stating ''Confidential Version.'' The unredacted version must be filed on the same day as the redacted version.

(4) Serve one hard copy of the filed unredacted materials and one hard copy of the filed redacted materials on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of §§ 1.47(g) and 1.734(f).

(b) An attorney of record for a party or a party that receives unredacted materials marked as confidential may disclose such materials solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Support personnel for counsel of record representing the parties in the complaint action;

(2) Officers or employees of the receiving party who are directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties; and

(4) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) The individuals identified in paragraph (b) of this section shall not disclose information designated as confidential to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each such individual who is provided access to the information shall sign a declaration or affidavit stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(d) Parties may make copies of materials marked confidential solely for use by the Commission or persons designated in paragraph (b) of this section. Each party shall maintain a log recording the number of copies made of all confidential material and the persons to whom the copies have been provided.

(e) The Commission may adopt a protective order with further restrictions as appropriate.

(f) Upon termination of a formal complaint proceeding, including all appeals and petitions, the parties shall ensure that all originals and reproductions of any confidential materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the confidential materials of an opposing or third party shall be destroyed.

§ 1.732 Other required written submissions.

(a) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence and presenting relevant legal authority and analysis. The Commission may limit the scope of any briefs to certain subjects or issues. Unless otherwise directed by the Commission, all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, or any other pleading submitted in the proceeding.

(b) Claims and defenses previously made but not reflected in the briefs will be deemed abandoned.

(c) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding.

§ 1.733 Status conference.

(a) In any complaint proceeding, the Commission may, in its discretion, direct the attorneys and/or the parties to appear before it for a status conference. A status conference may include discussion of:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of additional pleadings or evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of all or some of the matters in controversy by agreement of the parties;

(5) Whether discovery is necessary and, if so, the scope, type, and schedule for such discovery;

(6) The schedule for the remainder of the case and the dates for any further status conferences; and

(7) Such other matters that may aid in the disposition of the complaint.

(b)(1) Parties shall meet and confer prior to the initial status conference to discuss:

(i) Settlement prospects;

(ii) Discovery;

(iii) Issues in dispute;

(iv) Schedules for pleadings;

(v) Joint statement of stipulated facts, disputed facts, and key legal issues; and

(2) Parties shall submit a joint statement of all proposals agreed to and disputes remaining as a result of such meeting to Commission staff on a date specified by the Commission.

(c) In addition to the initial status conference referenced in paragraph (a) of this section, any party may also request that a conference be held at any time after the complaint has been filed.

(d) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of matters relevant to the conduct of a formal complaint proceeding including, *inter alia,* procedural matters, discovery, and the submission of briefs or other evidentiary materials.

(e) Status conferences will be scheduled by the Commission staff at such time and place as it may designate to be conducted in person or by telephone conference call.

(f) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver by that party and will not preclude the Commission staff from conferring with those parties or counsel present.

§ 1.734 Fee remittance; electronic filing; copies; service; separate filings against multiple defendants.

(a) Complaints may not be brought against multiple defendants unless they are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall remit separately the correct fee either by check, wire transfer, or electronically, in accordance with part 1, subpart G (see § 1.1106) and, shall file an original copy of the complaint, using the Commission's Electronic Comment Filing System. If a complaint is addressed against multiple defendants, the complainant shall pay a separate fee for each additional defendant.

(c) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the

named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(d) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by email, to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall additionally send by email, to all parties, a schedule detailing the date the answer and any other applicable pleading will be due and the date, time, and location of the initial status conference.

(e) Parties shall provide hard copies of all submissions to staff in the Enforcement Bureau upon request.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be filed using the Commission's Electronic Comment Filing System, excluding confidential material as set forth in § 1.731. In addition, all pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of § 1.47(g). Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service; or

(3) Service by email that is fully transmitted to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by email that is fully transmitted to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day.

(g) Supplemental complaints filed pursuant to § 1.723 shall conform to the requirements set forth in this section, except that the complainant need not submit a filing fee.

§ 1.735 Conduct of proceedings.

(a) The Commission may issue such orders and conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice.

(b) The Commission may decide each complaint upon the filings and information before it, may request additional information from the parties, and may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute.

§ 1.736 Accelerated Docket Proceedings.

(a) With the exception of complaint proceedings under 47 U.S.C. 255, 617, and 619, and part 14 of this chapter, parties to a formal complaint proceeding against a common carrier, or a pole attachment complaint proceeding against a cable television system operator, a utility, or a telecommunications carrier, may request inclusion on the Accelerated Docket. Proceedings on the Accelerated Docket must be concluded within 60 days, and are therefore subject to shorter pleading deadlines and other modifications to the procedural rules that govern formal complaint proceedings.

(b) A complainant that seeks inclusion of a proceeding on the Accelerated Docket shall submit a request to the Chief of the Enforcement Bureau's Market Disputes Resolution Division, by phone and in writing, prior to filing the complaint.

(c) Within five days of receiving service of any formal complaint against a common carrier, or a pole attachment complaint against a cable television system operator, a utility, or a telecommunications carrier, a defendant may submit a request seeking inclusion of the proceeding on the Accelerated Docket to the Chief of the Enforcement Bureau's Market Disputes Resolution Division. The defendant shall submit such request by phone and in writing, and contemporaneously transmit a copy of the written request to all parties to the proceeding.

(d) Commission staff has discretion to decide whether a complaint, or portion of a complaint, is suitable for inclusion on the Accelerated Docket.

(e) In appropriate cases, Commission staff may require that the parties participate in pre-filing settlement negotiations or mediation under § 1.737.

(f) If the parties do not resolve their dispute and the matter is accepted for handling on the Accelerated Docket, staff will establish the schedule and process for the proceeding.

(g) If it appears at any time that a proceeding on the Accelerated Docket is no longer appropriate for such treatment, Commission staff may remove the matter from the Accelerated Docket either on its own motion or at the request of any party.

(h) In Accelerated Docket proceedings, the Commission may conduct a minitrial, or a trial-type hearing, as an alternative to deciding a case on a written record. Minitrials shall take place no later than between 40 and 45 days after the filing of the complaint. A Commission Administrative Law Judge (''ALJ'') or staff may preside at the minitrial.

(i) Applications for review of staff decisions issued on delegated authority in Accelerated Docket proceedings shall comply with the filing and service requirements in § 1.115(e)(4). In Accelerated Docket proceedings which raise issues that may not be decided on delegated authority (see 47 U.S.C. 155(c)(1); 47 CFR 0.331(c)), the staff decision will be a recommended decision subject to adoption or modification by the Commission. Any party to the proceeding that seeks modification of the recommended decision shall do so by filing comments challenging the decision within 15 days of its release. Opposition comments, shall be filed within 15 days of the comments challenging the decision; reply comments shall may be filed 10 days thereafter and shall be limited to issues raised in the opposition comments.

(j) If no party files comments challenging the recommended decision, the Commission will issue its decision adopting or modifying the recommended decision within 45 days of its release. If parties to the proceeding file comments to the recommended decision, the Commission will issue its decision adopting or modifying the recommended decision within 30 days of the filing of the final comments.

■ 8. Add §§ 1.737 through 1.740 to read as follows:

§ 1.737 Mediation.

(a) The Commission encourages parties to attempt to settle or narrow their disputes. To that end, staff in the Enforcement Bureau's Market Disputes Resolution Division are available to conduct mediations. Staff will determine whether a matter is appropriate for mediation. Participation in mediation is generally voluntary, but may be required as a condition for including a matter on the Accelerated Docket.

(b) Parties may request mediation of a dispute before the filing of a complaint. After a complaint has been filed, parties may request mediation as long as a proceeding is pending before the Commission.

(c) Parties may request mediation by: Calling the Chief of the Enforcement Bureau's Market Disputes Resolution Division; submitting a written request in a letter addressed to the Chief of the Market Disputes Resolution Division; or including a mediation request in any pleading in a formal complaint proceeding, or an informal complaint proceeding under § 1.717. Any party requesting mediation must verify that it has attempted to contact all other parties to determine whether they are amenable to mediation, and shall state the response of each party, if any.

(d) Staff will schedule the mediation in consultation with the parties. Staff may request written statements and other information from the parties to assist in the mediation.

(e) In any proceeding to which no statutory deadline applies, staff may, in its discretion, hold a case in abeyance pending mediation.

(f) The parties and Commission staff shall keep confidential all written and oral communications prepared or made for purposes of the mediation, including mediation submissions, offers of compromise, and staff and party comments made during the course of the mediation (Mediation Communications). Neither staff nor the parties may use, disclose or seek to disclose Mediation Communications in any proceeding before the Commission (including an arbitration or a formal complaint proceeding involving the instant dispute) or before any other tribunal, unless compelled to do so by law. Documents and information that are otherwise discoverable do not become Mediation Communications merely because they are disclosed or discussed during the mediation. Unless otherwise directed by Commission staff, the existence of the mediation will not be treated as confidential. A party may request that the existence of the mediation be treated as confidential in a case where this fact has not previously been publicly disclosed, and staff may grant such a request for good cause shown.

(g) Any party or Commission staff may terminate a mediation by notifying other participants of their decision to terminate. Staff shall promptly confirm in writing that the mediation has ended. The confidentiality rules in paragraph (f) of this section shall continue to apply to any Mediation Communications. Further, unless otherwise directed, any staff ruling requiring that the existence of the mediation be treated as confidential will continue to apply after the mediation has ended.

(h) For disputes arising under 47 U.S.C. 255, 617, and 619, and the advanced communications services and equipment rules, parties shall submit the Request for Dispute Assistance in accordance with § 14.32 of this chapter.

§ 1.738 Complaints filed pursuant to 47 U.S.C. 271(d)(6)(B).

(a) Where a complaint is filed pursuant to 47 U.S.C. 271(d)(6)(B), parties shall indicate whether they are willing to waive the 90 day resolution deadline contained in 47 U.S.C. 271(d)(6)(B) in the following manner:

(1) The complainant shall so indicate in both the complaint itself and in the Formal Complaint Intake Form, and the defendant shall so indicate in its answer; or

(2) The parties shall indicate their agreement to waive the 90 day resolution deadline to the Commission staff at the initial status conference, to be held in accordance with § 1.733.

(b) Requests for waiver of the 90 day resolution deadline for complaints filed pursuant to 47 U.S.C. 271(d)(6)(B) will not be entertained by the Commission staff subsequent to the initial status conference, absent a showing by the complainant and defendant that such waiver is in the public interest.

§ 1.739 Primary jurisdiction referrals.

(a) Any party to a case involving claims under the Act that has been referred to the Commission by a court pursuant to the primary jurisdiction doctrine must contact the Market Disputes Resolution Division of the Enforcement Bureau for guidance before filing any pleadings or otherwise proceeding before the Commission.

(b) Based upon an assessment of the procedural history and the nature of the issues involved, the Market Disputes Resolution Division will determine the procedural means by which the Commission will handle the primary jurisdiction referral.

(c) Failure to contact the Market Disputes Resolution Division prior to filing any pleadings or otherwise proceeding before the Commission, or failure to abide by the Division's determinations regarding the referral, may result in dismissal.

§ 1.740 Review period for section 208 formal complaints not governed by section 208(b)(1) of the Act.

(a) Except in extraordinary circumstances, final action on a formal complaint filed pursuant to section 208 of the Act, and not governed by section 208(b)(1), should be expected no later than 270 days from the date the complaint is filed with the Commission.

(b) The Enforcement Bureau shall have the discretion to pause the 270-day review period in situations where actions outside the Commission's control are responsible for unreasonably delaying Commission review of a complaint referenced in paragraph (a) of this section.

■ 9. Amend the table of contents of part 1 by revising the entries in Subpart J to read as follows:

* * * * *

Subpart J—Pole Attachment Complaint Procedures

Sec.

* * * * *

■ 10. Revise § 1.1401 to read as follows:

§ 1.1401 Purpose.

The rules and regulations contained in subpart J of this part provide complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms, and conditions that are just and reasonable. They also provide complaint and enforcement procedures for incumbent local exchange carriers (as defined in 47 U.S.C. 251(h)) to ensure that the rates, terms, and conditions of their access to pole attachments are just and reasonable.

■ 11. Amend § 1.1402 by revising paragraph (f) to read as follows:

§ 1.1402 Definitions.

* * * * *

(f) The term *defendant* means a cable television system operator, a utility, or

a telecommunications carrier against whom a complaint is filed.

* * * * *

■ 12. Amend § 1.1403 by revising paragraphs (c)(1) and (d) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * * * *

(c) * * *

(1) Removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of the cable television system operator's or telecommunications carrier's pole attachment agreement;

* * * * *

(d) A cable television system operator or telecommunications carrier may file a ''Petition for Temporary Stay'' of the action contained in a notice received pursuant to paragraph (c) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service or telecommunication service, a copy of the notice, and certification of service as required by § 1.1404(b). The named may file an answer within 7 days of the date the Petition for Temporary Stay was filed. No further filings under this section will be considered unless requested or authorized by the Commission and no extensions of time will be granted unless justified pursuant to § 1.46.

* * * * *

■ 13. Revise §§ 1.1404 through 1.1405 to read as follows:

§ 1.1404 Pole attachment complaint proceedings.

(a) Pole attachment complaint proceedings shall be governed by the formal complaint rules in subpart E of this part, §§ 1.720–1.740, except as otherwise provided in this subpart J.

(b) The complaint shall be accompanied by a certification of service on the named defendant, and each of the Federal, State, and local governmental agencies that regulate any aspect of the services provided by the complainant or defendant.

(c) In a case where it is claimed that a rate, term, or condition is unjust or unreasonable, the complaint shall contain a statement that the State has not certified to the Commission that it regulates the rates, terms and conditions for pole attachments. The complaint shall include a statement that the utility is not owned by any railroad, any person who is cooperatively organized or any person owned by the Federal Government or any State.

(d) The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the cable television system operator or telecommunications carrier and the utility. If there is no present pole attachment agreement, the complaint shall contain:

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

(2) A statement that the cable television system operator or telecommunications carrier currently has attachments on the poles, ducts, conduits, or rights-of-way.

(e) The complaint shall state with specificity the pole attachment rate, term or condition which is claimed to be unjust or unreasonable and provide all data and information supporting such claim. Data and information supporting the complaint (including all information necessary for the Commission to apply the rate formulas in § 1.1406 should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not just and reasonable.

(f) A utility must supply a cable television system operator or telecommunications carrier the information required in paragraph (e) of this section, as applicable, along with the supporting pages from its ARMIS, FERC Form 1, or other report to a regulatory body, and calculations made in connection with these figures, within 30 days of the request by the cable television system operator or telecommunications carrier.

(g) If any of the information and data required in paragraphs (e) and (f) of this section is not provided to the cable television system operator or telecommunications carrier by the utility upon reasonable request, the cable television system operator or telecommunications carrier shall include a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests. No complaint filed by a cable television system operator or telecommunications carrier shall be dismissed where the utility has failed to provide the information required under paragraphs (e) and (f) after such reasonable request.

§ 1.1405 Dismissal of pole attachment complaints for lack of jurisdiction.

(a) The complaint shall be dismissed for lack of jurisdiction in any case where a suitable certificate has been filed by a State pursuant to paragraph (b) of this section. Such certificate shall be conclusive proof of lack of jurisdiction of this Commission. A complaint alleging a denial of access shall be dismissed for lack of jurisdiction in any case where the defendant or a State offers proof that the State is regulating such access matters. Such proof should include a citation to state laws and regulations governing access and establishing a procedure for resolving access complaints in a state forum. A complaint against a utility shall also be dismissed if the utility does not use or control poles, ducts, or conduits used or designated, in whole or in part, for wire communication or if the utility does not meet the criteria of § 1.1402(a).

(b) It will be rebuttably presumed that the state is not regulating pole attachments if the Commission does not receive certification from a state that:

(1) It regulates rates, terms and conditions for pole attachments;

(2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the consumers of the services offered via such attachments, as well as the interests of the consumers of the utility services; and

(3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state).

(c) Upon receipt of such certification, the Commission shall give public notice. In addition, the Commission shall compile and publish from time to time, a listing of states which have provided certification.

(d) Upon receipt of such certification, the Commission shall forward any pending case thereby affected to the state regulatory authority, shall so notify the parties involved and shall give public notice thereof.

(e) Certification shall be by order of the state regulatory body or by a person having lawful delegated authority under provisions of state law to submit such certification. Said person shall provide in writing a statement that he or she has such authority and shall cite the law,

regulation or other instrument conferring such authority.

(f) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:

(1) Within 180 days after the complaint is filed with the state, or

(2) Within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

§§ 1.1406, 1.1407 and 1.1408 [Removed]

■ 14. Remove §§ 1.1406, 1.1407 and 1.1408.

§ 1.1409 [Redesignated as § 1.1406]

■ 15. Redesignate § 1.1409 as § 1.1406, and revise newly designated § 1.1406 to read as follows:

§ 1.1406 Commission consideration of the complaint.

(a) The complainant shall have the burden of establishing a *prima facie* case that the rate, term, or condition is not just and reasonable or that the denial of access violates 47 U.S.C. 224(f). If, however, a utility argues that the proposed rate is lower than its incremental costs, the utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate. In a case involving a denial of access, the utility shall have the burden of proving that the denial was lawful, once a *prima facie* case is established by the complainant.

(b) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this paragraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way. The Commission shall exclude from actual capital costs those reimbursements received by the utility from cable operators and telecommunications carriers for non-recurring costs.

(c) The Commission shall deny the complaint if it determines that the complainant has not established a *prima facie* case, or that the rate, term or condition is just and reasonable, or that the denial of access was lawful.

(d) The Commission will apply the following formulas for determining a maximum just and reasonable rate:

(1) The following formula shall apply to attachments to poles by cable operators providing cable services. This formula shall also apply to attachments to poles by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Where Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}}$$

(2) With respect to attachments to poles by any telecommunications carrier or cable operator providing telecommunications services, the maximum just and reasonable rate shall be the higher of the rate yielded by paragraphs (d)(2)(i) or (d)(2)(ii) of this section.

(i) The following formula applies to the extent that it yields a rate higher than that yielded by the applicable formula in paragraph (d)(2)(ii) of this section:

Rate = Space Factor × Cost

Where Cost

in Service Areas where the number of Attaching Entities is 5 = 0.66 × (Net Cost of a Bare Pole × Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 4 = 0.56 × (Net Cost of a Bare Pole × Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 3 = 0.44 × (Net Cost of a Bare Pole × Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 2 = 0.31 × (Net Cost of a Bare Pole × Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is not a whole number = N × (Net Cost of a Bare Pole × Carrying Charge Rate), where N is interpolated from the cost allocator associated with the nearest whole numbers above and below the number of Attaching Entities.

$$\text{Where Space Factor} = \left[\frac{\left(\text{Space Occupied}\right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right]$$

(ii) The following formula applies to the extent that it yields a rate higher than that yielded by the applicable formula in paragraph (d)(2)(i) of this section:

$$\text{Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \left[\begin{array}{c}\text{Maintenance and Administrative}\\ \text{Carrying Charge Rate}\end{array}\right]$$

$$\text{Where Space Factor} = \left[\frac{\left(\begin{array}{c}\text{Space}\\ \text{Occupied}\end{array}\right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right]$$

(3) The following formula shall apply to attachments to conduit by cable operators and telecommunications carriers:

$$\begin{array}{l}\textit{Maximum}\\ \textit{Rate} \text{ per}\\ \textit{Linear} \text{ ft./m.}\end{array} = \underbrace{\left[\frac{1}{\textit{Number} \text{ of Ducts}} \times \frac{1 \text{ Duct}}{\textit{No.} \text{ of Inner Ducts}}\right]}_{\text{(Percentage of Conduit Capacity)}} \times \underbrace{\left[\begin{array}{l}\textit{No.} \text{ of}\\ \text{Ducts}\end{array} \times \frac{\textit{Net} \text{ Conduit Investment}}{\text{System Duct Length (ft./m.)}}\right]}_{\text{(Net Linear Cost of a Conduit)}} \times \begin{array}{c}\text{Carrying}\\ \text{Charge}\\ \text{Rate}\end{array}$$

simplified as:

$$\begin{array}{l}\textit{Maximum Rate}\\ \text{Per } \textit{Linear} \text{ ft./m.}\end{array} = \frac{1 \text{ Duct}}{\textit{No.} \text{ of Inner Ducts}} \times \frac{\textit{Net} \text{ Conduit Investment}}{\text{System Duct Length (ft./m.)}} \times \begin{array}{c}\text{Carrying}\\ \text{Charge}\\ \text{Rate}\end{array}$$

(4) If no inner-duct is installed the fraction, ''1 Duct divided by the No. of Inner-Ducts'' is presumed to be ½.

§ 1.1410 [Redesignated as § 1.1407]

■ 16. Redesignate § 1.1410 as § 1.1407, and revise newly designated § 1.1407 to read as follows:

§ 1.1407 Remedies.

(a) If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may:

(1) Terminate the unjust and/or unreasonable rate, term, or condition;

(2) Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the Commission; and/or

(3) Order a refund, or payment, if appropriate. The refund or payment will normally be the difference between the amount paid under the unjust and/or unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission, plus interest, consistent with the applicable statute of limitations.

(b) If the Commission determines that access to a pole, duct, conduit, or right-of-way has been unlawfully denied or delayed, it may order that access be permitted within a specified time frame and in accordance with specified rates, terms, and conditions.

§§ 1.1411 through 1.1415 [Removed]

■ 17. Remove §§ 1.1411 through 1.1415.

§ 1.1416 [Redesignated as § 1.1408]

■ 18. Redesignate § 1.1416 as § 1.1408.

§ 1.1417 [Redesignated as § 1.1409]

■ 19. Redesignate § 1.1417 as § 1.1409, and amend newly designated § 1.1409 by revising paragraph (a) and (c) to read as follows:

§ 1.1409 Allocation of Unusable Space Costs.

(a) With respect to the formula referenced in § 1.1406(d)(2), a utility shall apportion the cost of providing unusable space on a pole so that such apportionment equals two-thirds of the costs of providing unusable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

* * * * *

(c) Utilities may use the following rebuttable presumptive averages when calculating the number of attaching entities with respect to the formula referenced in § 1.1406(d)(2). For non-urbanized service areas (under 50,000 population), a presumptive average number of attaching entities of three. For urbanized service areas (50,000 or higher population), a presumptive average number of attaching entities of five. If any part of the utility's service area within the state has a designation of urbanized (50,000 or higher population) by the Bureau of Census, United States Department of Commerce, then all of that service area shall be designated as urbanized for purposes of determining the presumptive average number of attaching entities.

* * * * *

§ 1.1418 [Redesignated as § 1.1410]

■ 20. Redesignate § 1.1418 as § 1.1410, and revise newly designated § 1.1410 to read as follows:

§ 1.1410 Use of presumptions in calculating the space factor.

With respect to the formulas referenced in § 1.1406(d)(1) and (d)(2), the space occupied by an attachment is presumed to be one foot. The amount of usable space is presumed to be 13.5 feet. The amount of unusable space is presumed to be 24 feet. The pole height is presumed to be 37.5 feet. These presumptions may be rebutted by either party.

§ 1.1420 [Redesignated as § 1.1411]

■ 21. Redesignate § 1.1420 as § 1.1411, and revise paragraph (d) and the introductory text of paragraph (i) to read as follows:

§ 1.1411 Timeline for access to utility poles.

* * * * *

(d) *Estimate.* Where a request for access is not denied, a utility shall present to a cable operator or telecommunications carrier an estimate of charges to perform all necessary make-ready work within 14 days of providing the response required by paragraph (c) of this section, or in the case where a prospective attacher's contractor has performed a survey, within 14 days of receipt by the utility of such survey.

(1) A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented.

(2) A cable operator or telecommunications carrier may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

* * * * *

(i) If a utility fails to respond as specified in paragraph (c) of this section, a cable operator or telecommunications carrier requesting attachment in the communications space may, as specified in § 1.1412, hire a contractor to complete a survey. If make-ready is not complete by the date specified in paragraph (e)(1)(ii) of this section, a cable operator or telecommunications carrier requesting attachment in the communications space may hire a contractor to complete the make-ready:

* * * * *

§ 1.1422 [Redesignated as 1.1412]

■ 22. Redesignate § 1.1422 as § 1.1412, and amend newly designated § 1.1412 by revising paragraphs (a) and (b) to read as follows:

§ 1.1412 Contractors for survey and make-ready.

(a) A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready in the communications space on its utility poles in cases where the utility has failed to meet deadlines specified in § 1.1411.

(b) If a cable operator or telecommunications carrier hires a contractor for purposes specified in § 1.1411, it shall choose from among a utility's list of authorized contractors.

* * * * *

§§ 1.1424 [Redesignated as § 1.1413]

■ 23. Redesignate § 1.1424 as § 1.1413.

§ 1.1425 [Redesignated as § 1.1414]

■ 24. Redesignate § 1.1425 as § 1.1414, and revise newly designated § 1.1414 to read as follows:

§ 1.1414 Review period for pole attachment complaints.

(a) *Pole access complaints.* Except in extraordinary circumstances, final action on a complaint where a cable television system operator or provider of telecommunications service claims that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a utility should be expected no later than 180 days from the date the complaint is filed with the Commission. The Enforcement Bureau shall have the discretion to pause the 180-day review period in situations where actions outside the Enforcement Bureau's control are responsible for delaying review of a pole access complaint.

(b) *Other pole attachment complaints.* All other pole attachment complaints shall be governed by the review period in § 1.740.

PART 6—ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

■ 25. The authority citation for part 6 continues to read as follows:

Authority: 47 U.S.C. 151–154, 208, 255, and 303(r).

■ 26. Revise § 6.15 to read as follows:

§ 6.15 Generally.

(a) All manufacturers of telecommunications equipment or customer premises equipment and all providers of telecommunications services, as defined under this subpart are subject to the enforcement provisions specified in the Act and the rules in this chapter.

(b) For purposes of §§ 6.15–6.16, the term ''manufacturers'' shall denote manufacturers of telecommunications equipment or customer premises equipment and the term ''providers'' shall denote providers of telecommunications services.

■ 27. Revise § 6.16 to read as follows:

§ 6.16 Informal or formal complaints.

Any person may file either a formal or informal complaint against a manufacturer or provider alleging violations of section 255 of the Act or this part subject to the enforcement requirements set forth in §§ 14.30 through 14.38 of this chapter.

§§ 6.17 through 6.23 [Removed]

■ 28. Remove §§ 6.17 through 6.23.

PART 7—ACCESS TO VOICEMAIL AND INTERACTIVE MENU SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

■ 29. The authority citation for part 7 continues to read as follows:

Authority: 47 U.S.C. 151–154, 208, 255, and 303(r).

■ 30. Revise § 7.15 to read as follows:

§ 7.15 Generally.

(a) For purposes of §§ 7.15 through 7.16, the term ''manufacturers'' shall denote any manufacturer of telecommunications equipment or customer premises equipment which performs a voicemail or interactive menu function.

(b) All manufacturers of telecommunications equipment or customer premises equipment and all providers of voicemail and interactive menu services, as defined under this subpart, are subject to the enforcement provisions specified in the Act and the rules in this chapter.

(c) The term ''provider'' shall denote any provider of voicemail or interactive menu service.

■ 31. Revise § 7.16 to read as follows:

§ 7.16 Informal or formal complaints.

Any person may file either a formal or informal complaint against a manufacturer or provider alleging violations of section 255 or this part subject to the enforcement requirements set forth in §§ 14.30 through 14.38 of this chapter.

§§ 7.17 through 7.23 [Removed]

■ 32. Remove §§ 7.17 through 7.23.

* * * * *

PART 14—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

■ 33. The authority citation for part 14 continues to read as follows:

Authority: 47 U.S.C. 151–154, 255, 303, 403, 503, 617, 618, 619 unless otherwise noted.

■ 34. Amend § 14.38 by revising the section heading and the introductory text to read as follows:

§ 14.38 Formal complaints.

Formal complaint proceedings alleging a violation of 47 U.S.C. 255, 617, or 619, or parts 6, 7, or 14 of this chapter, shall be governed by the formal

complaint rules in subpart E of part 1, §§ 1.7201.740.

* * * * *

§§ 14.39 through 14.52 [Removed]

■ 35. Remove §§ 14.39 through 14.52.

PART 20—COMMERCIAL MOBILE SERVICES

■ 36. The authority citation to part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a) 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 37. Amend § 20.18 by revising paragraph (m)(4)(vii) to read as follows:

§ 20.18 911 Service.

* * * * *

(m) * * *

(4) * * *

(vii) A copy of the certification must be served on the PSAP in accordance with § 1.47 of this chapter. The PSAP may challenge in writing the accuracy of the carrier's certification and shall serve a copy of such challenge on the carrier. *See* §§ 1.45 and 1.47 and §§ 1.720 through 1.740 of this chapter.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 38. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 218, 222, 225, 226, 227, 228, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

■ 39. Amend § 64.1160 by revising paragraph (e) to read as follows:

§ 64.1160 Absolution procedures where the subscriber has not paid charges.

* * * * *

(e) The Federal Communications Commission will not adjudicate a complaint filed pursuant to §§ 1.719 or §§ 1.720–1.740 of this chapter, involving an alleged unauthorized change, as defined by § 64.1100(e), while a complaint based on the same set of facts is pending with a state commission.

* * * * *

■ 40. Amend § 64.6217 by revising paragraph (c) to read as follows:

§ 64.6217 Complaints.

* * * * *

(c) *Formal complaints.* Formal complaints against an NDBEDP certified program may be filed in the form and in the manner prescribed under §§ 1.720 through 1.740 of this chapter. Commission staff may grant waivers of, or exceptions to, particular requirements under §§ 1.720 through 1.740 of this chapter for good cause shown; provided, however, that such waiver authority may not be exercised in a manner that relieves, or has the effect of relieving, a complainant of the obligation under §§ 1.721 and 1.722 of this chapter to allege facts which, if true, are sufficient to constitute a violation or violations of section 719 of the Communications Act or this subpart.

* * * * *

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 41. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 610.

■ 42. Amend § 68.105 by revising paragraph (d)(3) to read as follows:

§ 68.105 Minimum point of entry (MPOE) and demarcation point.

* * * * *

(d) * * *

(3) In any multiunit premises where the demarcation point is not already at the MPOE, the provider of wireline telecommunications services must comply with a request from the premises owner to relocate the demarcation point to the MPOE. The provider of wireline telecommunications services must negotiate terms in good faith and complete the negotiations within forty-five days from said request. Premises owners may file complaints with the Commission for resolution of allegations of bad faith bargaining by provider of wireline telecommunications services. *See* 47 U.S.C. 208, 47 CFR 1.720 through 1.740.

* * * * *

[FR Doc. 2018–18689 Filed 8–31–18; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 83, No. 171
Tuesday, September 4, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0761; Product Identifier 2018–NM–088–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This proposed AD was prompted by reports that, for multimaterial (hybrid) joints of the passenger door frame fittings, the interfay sealant was not applied between all surfaces of the joint parts. This proposed AD would require modification of the hybrid joints of the passenger doors by applying additional corrosion protection to the hybrid joints of the passenger door frame fittings. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 19, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, 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.

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–2018–0761; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street 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: 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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0761; Product Identifier 2018–NM–088–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of 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 NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0108, dated May 15, 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 airplanes. The MCAI states:

> Due to the misinterpretation of the prevailing requirements for multimaterial (hybrid) joints of the passenger door frame fittings, the interfay sealant, which prevents water ingress, was only applied on the surface in direct contact with the aluminum parts and not between all surfaces of the joint parts. For sealing of multi-material-stacks involving aluminum, application of interfay sealant is necessary between all assembled parts, even between parts made of corrosion resistant material, in order to ensure a double barrier to prevent water ingress in the joint and subsequent potential galvanic corrosion on the aluminum holes.
>
> This condition, if not corrected, could lead to failure of the door to perform its intended function, possibly resulting in reduced evacuation capacity from the aeroplane during an emergency and consequent injury to occupants.
>
> To address this unsafe condition, Airbus developed production mod 110790 and mod 109554 to improve protection against corrosion, and issued the SB [Airbus Service Bulletin A350–52–P012, Revision 00, dated September 7, 2017] to provide modification instructions for in-service pre-mod aeroplanes.
>
> For the reasons described above, this [EASA] AD requires a modification by adding sealant and protective treatment on the affected passenger doors.

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–2018–0761.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Service Bulletin A350–52–P012, Revision 00, dated September 7, 2017. This service information describes procedures for modification of the hybrid joints of the left-hand and right-hand sides of the passenger door frame fittings at doors 1, 2, 3 and 4, by applying additional corrosion protection. 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 proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 1 airplane of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
60 work-hours × $85 per hour = $5,100	$0	$5,100	$5,100

According to the manufacturer, some or all of the costs of this proposed 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 proposed 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2018–0761; Product Identifier 2018–NM–088–AD.

(a) Comments Due Date

We must receive comments by October 19, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in Airbus Service Bulletin A350–52–P012, Revision 00, dated September 7, 2017.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports that, for multimaterial (hybrid) joints of the passenger door frame fittings, the interfay sealant was not applied between all surfaces of the joint parts. We are issuing this AD to prevent water ingress in the hybrid joints and subsequent galvanic corrosion of the aluminum holes. This condition, if not corrected, could lead to failure of the door, resulting in reduced evacuation capacity from the airplane during an emergency and consequent injury to occupants.

(f) Compliance

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

(g) Modification of Passenger Door Hybrid Joints

Within 48 months after the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness, whichever occurs earlier: Apply additional corrosion protection (*e.g.,* primer/topcoat or corrosion prevention compound) to the hybrid joints of the left-hand and right-hand sides of the passenger door frame fittings at doors 1, 2, 3 and 4, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–52–P012, Revision 00, dated September 7, 2017.

(h) 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 (i)(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.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0108, dated May 15, 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–2018–0761.

(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.

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

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18993 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

40 CFR Chapter IX

[FPISC Case 2018–001; Docket No. 2018–0008; Sequence No. 1]

RIN 3090–AJ88

Fees for Governance, Oversight, and Processing of Environmental Reviews and Authorizations by the Federal Permitting Improvement Steering Council

AGENCY: Federal Permitting Improvement Steering Council.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking proposes to establish an initiation fee for project sponsors to reimburse the Federal Permitting Improvement Steering Council—Office of the Executive Director (FPISC–OED) for reasonable costs to implement certain requirements and authorities required under Title 41 of the Fixing America's Surface Transportation Act (FAST–41) and costs of operating FPISC–OED. FAST–41 creates a new authority to establish a fee structure to reimburse reasonable costs incurred in implementing certain requirements and authorities including the costs to agencies and the costs of operating the Permitting Council. In this rulemaking, we propose an initiation fee that would cover only reasonable costs for FPISC–OED's operations and costs to provide oversight and support to implement FAST–41. We seek comments on all aspects of the proposed rulemaking.

DATES: We will accept comments, data, and information regarding this proposed rule no later than November 5, 2018.

ADDRESSES: Submit comments in response to FPISC Case 2018–001 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''FPISC Case 2018–001'', under the heading ''Enter Keyword or ID'' and select ''Search''. Select the link ''Submit a Comment'' that corresponds with ''FPISC Case 2018–001'' and follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FPISC Case 2018–001'' on your attached document.
- *Mail:* FPISC–OED, c/o General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Lois Mandell, 1800 F Street NW, Washington, DC 20405.

Instructions: Please submit comments only and cite FPISC Case 2018–001 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Amber Levofsky, Federal Permitting Improvement Steering Council—Office of the Executive Director, 1800 F Street NW, Washington, DC 20504; telephone number: 202–412–2064; email address: *amber.levofsky@fpisc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title 41 of the Fixing America's Surface Transportation Act (Pub. L. 114–94, secs. 41001 *et seq.* (Dec. 4, 2015) (codified at 42 U.S.C. 4370m *et seq.*)) (FAST–41) seeks to encourage greater coordination across the Federal Government in environmental reviews and authorizations for large, complex infrastructure projects. To oversee its implementation, FAST–41 created the Federal Permitting Improvement Steering Council (FPISC or Permitting Council), which is chaired by an Executive Director appointed by the President and consists of Deputy Secretary-level members from 14 Federal agencies, the Council on Environmental Quality (CEQ), and the Office of Management and Budget (OMB) (42 U.S.C. 4370m–1). The 14 Federal agencies include 13 agencies designated in FAST–41 as enacted (42 U.S.C. 4370m–1(b)(2)(B)), as well as the General Services Administration (GSA), which was invited to join the Permitting Council by the Executive Director pursuant to 42 U.S.C. 4370m–1(b)(2)(B)(xiv) on May 2, 2017. In addition, GSA was designated by the OMB Director to provide administrative support for the Executive Director and, as reasonably necessary, provide support and staff to enable the Executive Director to fulfill the duties of the position, effective March 1, 2016 (42 U.S.C. 4370m–1(d)). GSA's membership in the Permitting Council and its role in providing administrative support to the Permitting Council establish the basis for GSA to assist the FPISC with this proposal (The term ''we'' as used in this document refers to the Permitting Council).

To become a new covered project under FAST–41, the project sponsor must submit a complete FAST–41 initiation notice (FIN) and send it to the facilitating agency, as designated in the OMB and CEQ Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (FAST–41 Implementation Guidance, published January 13, 2017) at *https://www.permits.performance.gov/tools/fast-41-implementation-guidance,* and the Executive Director. However, project sponsors have the option to engage and consult with potential lead, participating, and cooperating agencies (as defined in 42 U.S.C. 4370m) early in the project lifecycle, before they submit a FIN. FPISC–OED facilitates many of these consultations and discusses with the project sponsor the various considerations that project sponsors may take into account when determining whether and when to submit a FIN. For example, FPISC–OED will ensure the project sponsor knows who the facilitating agency would be for the project, the best approach in moving forward if there is a formalized pre-application process already in place, and an understanding of eligibility under FAST–41. For additional information on the requirements for a project to become covered under FAST–41 and the coordination recommended for project sponsors interested in submitting a FIN, see the FAST–41 Implementation Guidance.

If a FIN is approved and the project becomes a covered project under FAST–41, FPISC–OED supports the relevant Federal agencies and project sponsor during the Federal environmental review and authorization process. This support can include managing the integrity and content of data on the publicly-available Permitting Dashboard regarding schedules for the specific permits during the permitting process, verifying the accuracy of the data on a routine basis, assessing and determining the viability of modifications to schedules after they are posted on the Permitting Dashboard, and handling disputes between Federal agencies or between a project sponsor and a Federal agency related to the schedules (42 U.S.C. 4370m–2(c)(2)). In addition, FPISC–OED facilitates regularly scheduled Permitting Council meetings, consultations with the Department of Transportation (DOT) on Permitting Dashboard management, and meetings with project sponsors regarding project status and any updates related to agency coordination.

The duties of the Executive Director include, but are not limited to:

- Developing, in consultation with the Permitting Council, ''recommended performance schedules, including intermediate and final completion dates, for environmental reviews and authorizations most commonly required for each category of covered projects'' (42 U.S.C. 4370m–1(c)(1)(C));
- Recommending, in consultation with the Permitting Council, to the Director of OMB or to CEQ, guidance for agencies to carry out the responsibilities of FAST–41(42 U.S.C. 4370m–1(c)(1)(D));
- Coordinating with the Permitting Council to issue yearly recommendations on best practices for the categories outlined in 42 U.S.C. 4370m–1(c)(2)(B);
- Coordinating with the Permitting Council to meet annually with groups or individuals representing State, tribal, and local governments that are engaged in the infrastructure permitting process (42 U.S.C. 4370m–1(c)(2)(C));
- Reviewing and approving any modifications of more than 30 days to the permitting schedule of covered projects to prevent undue delays and ensure a realistic and concurred-upon schedule has been developed, upon which all parties will act moving forward (42 U.S.C. 4370m–2(c)(2)(D)(i)(III)); and
- Mediating disputes between project sponsors and relevant agencies related to the permitting timetable. If no conclusions are made after a total of 60 days, the Office of Management and Budget will make a final decision (42 U.S.C. 4370m–2(c)(2)(C).

This document proposes to establish a required initiation fee for project sponsors to reimburse FPISC–OED for reasonable costs to implement the requirements and authorities mentioned above under FAST–41 and costs of operating FPISC–OED. The fee is necessary because as an oversight council, FPISC–OED is responsible for implementing the provisions of FAST–41 by facilitating and institutionalizing the transparency, accountability, and coordination among Federal agencies related to the Federal environmental review and authorization process. The fee allows FPISC–OED to carry out its obligations to improve the infrastructure permitting process.

II. Authority

Pursuant to 42 U.S.C. 4370m–8(a), the heads of Permitting Council agencies, with the guidance of the Director of OMB and in consultation with the Executive Director, may issue regulations establishing a fee structure to recover, from project sponsors, reasonable costs incurred in conducting environmental reviews and authorizations for infrastructure projects covered by FAST–41. Reasonable costs include costs to implement the requirements and authorities of 42 U.S.C. 4370m–1 and 4370m–2, including (1) the costs to agencies and (2) the costs of operating the Council (42 U.S.C. 4370m–8(b)), which includes FPISC–OED.

III. Discussion

A. Proposed Regulations

i. § 1900.1 Purpose and Scope

FAST–41 established a new governance structure, set of procedures, and authorities to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects. Section 1900.1 of this proposed

regulation would restate the statutory requirement and introduce the purpose of the proposed requirements. Section 1900.1 also would set the rule's effective date (*i.e.,* the date on which project sponsors would have to comply with the rule).

We propose the effective date to be one day following publication of a final rule because we estimate that project sponsors will take only 2.5 hours to familiarize themselves with the rule, complete the FIN, and ensure that their accounting system(s) can transfer the appropriate initiation fee with the FIN. FAST–41 was signed into law in December 2015; since then, seven projects have submitted FINs and gone through the process of becoming covered projects. We request comment on the effective date of the proposed rule and whether the proposed effective date would provide project sponsors sufficient time to adequately comply with the regulations.

ii. § 1900.2 Definitions

Section 1900.2 would define key terms used throughout the proposed regulations, many of which were derived from FAST–41, with modifications where further clarification was needed. We propose to adopt the same definition of the following terms as they are defined in 42 U.S.C. 4370m: ''Agency,'' ''Covered project,'' ''Executive Director,'' ''Facilitating agency,'' ''Lead agency,'' ''NEPA,'' and ''Project sponsor.'' In addition, we propose to add the following terms that have not been defined in FAST–41 to provide clarity for the regulations:

(a) *Business day.* We propose that the term ''business day'' means Monday through Friday and excludes Federal legal holidays.

(b) *Environmental Review Improvement Fund.* We propose that the term ''Environmental Review Improvement Fund'' refers to the fund described in 42 U.S.C. 4370m–8(d) which must be established in the Treasury of the United States to deposit any fees collected. The amounts available in the Environmental Review and Improvement Fund shall be available to the Executive Director, without appropriation or fiscal year limitation, solely for the purposes of administering, implementing, and enforcing FAST–41, including the expenses of the Council;

(c) *FAST–41.* We propose to define the term ''FAST–41'' to mean Title 41 of the Fixing America's Surface Transportation Act (Pub. L. 114–94, 41001 *et seq.* (Dec. 4, 2015) (codified at 42 U.S.C. 4370m *et seq.*)) which is the basis for this proposed regulation;

(d) *FAST–41 initiation notice (FIN).* We propose to define the term ''FAST–41 initiation notice,'' which is not defined in Title 42 of the United States Code, as a FAST–41 initiation notice of a proposed covered project that a project sponsor submits to FPISC–OED and the facilitating agency;

(e) *FPISC–OED.* We propose to define the term ''FPISC–OED,'' which is not defined in Title 42 of the United States Code, as the Federal Permitting Improvement Steering Council-Office of Executive Director that supports the Federal Permitting Improvement Steering Council in implementing the provisions of FAST–41;

(f) *Indian tribe.* We propose to define the term ''Indian tribe,'' which is not defined in Title 42 of the United States Code, as any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(g) *Initiation Fee.* We propose to define the term ''initiation fee,'' which is not defined in Title 42 of the United States Code, as a non-refundable payment submitted by a project sponsor. The proposed rule provides more detail on the initiation fee amount and how it will be assessed.

iii. § 1900.3 FAST–41 Initiation Fee

In proposed section 1900.3(a), we propose an initiation fee of $200,000 per FIN submitted for each project by a project sponsor of a proposed covered project. An explanation of how this amount was determined is discussed in section B.iii of this proposed rule. The initiation fee would be due in two parts—$5,000 would be due at the time the project sponsor submits the FIN and $195,000 would be due within 10 business days of a determination that the project is a covered project for purposes of FAST–41. The $5,000 non-refundable portion was determined through analysis of FPISC–OED's costs incurred on pre-coordination with project sponsors, pre-coordination with lead and cooperating agencies, and FIN review. If the project is determined not to be a covered project, the $5,000 portion of the initiation fee would not be refunded and the $195,000 would not be assessed. We determined that 10 business days was an appropriate balance of providing sponsors with sufficient time to prepare the necessary funds and wanting to start providing FPISC–OED services as soon as possible. That being said, we solicit public comment on whether we should consider a different period of time.

In the future, we may need to adjust the amount of the initiation fee based on changes to program costs and the number of new FINs received. Section 1900.3(b) sets out the mechanism by which the Permitting Council would be able to change the fee. The fee being set in this regulation is based, in part, on the fact that in fiscal year (FY) 2017 FPISC–OED supported 35 covered projects. In the next few years, FPISC–OED anticipates additional projects becoming covered at the beginning of or in the early stages of project implementation. As a result, more coordination may be necessary between FPISC–OED, the Permitting Council agencies, and project sponsors. In addition, FPISC–OED's costs are anticipated to increase based on the number of projects that are accepted as covered projects as a greater number of projects will require additional staff for support. If necessary, FPISC–OED would adjust the fee by developing an average hourly rate for government staff using the number of full time employees multiplied by the salary of each employee (based on the General Schedule classification and pay system), which also includes overhead and operational costs. For contractor support costs, FPISC–OED would use total contract costs divided by full time employees to develop an average hourly rate that also includes salary, overhead, and operational costs. A change in the initiation fee would not change the non-refundable portion of the fee, only the portion due at the time the project was determined to be a covered project under FAST–41. The regulation would require FPISC to publish the new amount of the initiation fee in the **Federal Register** before it can take effect. We seek comment on the methodology for calculating the new initiation fee and whether changes to the initiation fee should be made through notification in the **Federal Register** or whether we should take comment before a revised initiation fee takes effect.

In proposed section 1900.3(c), any Indian tribe proposing covered projects on trust property are exempted from paying the initiation fee. This is consistent with the trust relationship as well as the government-to-government relationship between the Federal Government and federally-recognized Indian tribes, and will enable FPISC–OED to provide services, without

additional cost to tribal governments, in order to protect trust assets held for the benefit of Indian tribes.

In addition to Indian tribes, the fee structure allows the Permitting Council to exempt other parties for which the fee would impose an undue financial burden or is otherwise determined to be inappropriate. Therefore, on a case-by-case basis, FPISC–OED would grant exemptions, in whole or in part, to project sponsors demonstrating that the fee would impose undue financial burden or was otherwise inappropriate. A petition for an exemption would require sufficient supporting evidence to demonstrate that the fee would be economically burdensome or inappropriate. FPISC–OED would consider the following factors in making an exemption determination:

(a) The nature and cost of the infrastructure project;

(b) The financial impact of the fee on the project sponsor;

(c) The financial resources of the project sponsor; and

(d) The type of operations of the project sponsor.

In proposed section 1900.3(d), the Executive Director would review a project sponsor's petition for an exemption and based on the factors listed above and would either approve or deny the petition for exemption. We are proposing the Executive Director have 30 days to review the petition for exemption and make a written determination. Once a determination is made, the Executive Director will transmit the written determination, including a statement of reasons, to the project sponsor. This proposal solicits public comment on the specific exemptions it is proposing and on the conditions by which it would review such exemptions.

In proposed section 1900.3(e), as allowed by FAST–41, the initiation fee would be used by FPISC–OED to cover its costs in implementing the requirements and authorities of 42 U.S.C. 4370m–1 and 4370m–2 and the operational costs of FPISC–OED (42 U.S.C. 4370m–8(a)). For example, activities undertaken by FPISC–OED that may be covered by the initiation fee could include, without being limited to, pre-coordination with project sponsors; pre-coordination with lead and cooperating agencies; FIN review; maintenance and enhancements of the Permitting Dashboard including operations, security, and the development and provision of training; outreach to stakeholders through conferences and meetings; producing handouts, flyers, and information materials for project sponsors related to FAST–41; developing recommended performance schedules including intermediate and final completion dates for environmental reviews and authorizations; assisting with development of coordinated project plans (CPPs); reviewing and approving any modifications of more than 30 days to the permitting schedule of covered projects; mediating disputes between projects sponsors and relevant agencies related to the permitting timetable; assessing Permitting Council agency updates to the CPPs and Permitting Dashboard; tracking compliance with permitting timetable dates; writing reports and implementation guidance; writing standard operating procedures; and conducting Permitting Council, Chief Environmental Review and Permitting Officer (CERPO), and Permitting Council Working Group meetings. The initiation fee would also cover FPISC–OED's costs of operations including, but not limited to, staffing and personnel, office space and equipment, and program support contracts. The proposed initiation fee would have no impact on fee requirements of other Federal agencies under their existing processes and is not intended to be allotted to Permitting Council agencies to facilitate their reviews and/or participation in the FAST–41 process.

In proposed section 1900.3(f), we would ensure that all initiation fees collected were deposited into the Environmental Review and Improvement Fund as required by FAST–41 (42 U.S.C. 4370m–8(d)(1)). Amounts collected under the initiation fee final rule would be available to the Permitting Council Executive Director, without appropriation or fiscal year limitation, for the purpose of administering FAST–41 and operating the FPISC–OED (42 U.S.C. 4370m–8(d)(2)). The use of funds accepted under this fee structure shall not impact impartial decision-making with respect to environmental reviews or authorizations, either substantively or procedurally, because FPISC–OED does not have any authority in the decision-making with respect to environmental reviews and authorizations (42 U.S.C. 4370m–8(e)). FPISC–OED ensures enhanced coordination, visibility, predictability, and accountability in the environmental review and authorization process. The outcome of the environmental review and authorization process remains with the lead, cooperating, and participating agencies, as applicable, that conduct and issue environmental reviews and authorizations.

B. Economic Impacts

i. Benefits of the Initiation Fee to Project Sponsors of Covered Projects

In considering the potential impacts of the proposed rule, we anticipate that there will be no change in potential benefits associated with this rule. Benefits are not quantified in this analysis. However, the proposed rule is associated with benefits in that it allows for the continuation of the FPISC–OED's services. An initiation fee is necessary because as an oversight council, FPISC–OED is responsible for implementing the provisions of FAST–41 by facilitating and institutionalizing the transparency, accountability, and coordination among Federal agencies related to the Federal environmental review and authorization process. The fee allows FPISC–OED to carry out its obligations to improve the infrastructure permitting process. Specifically, an initiation fee would allow FPISC to continue to produce the following benefits for projects covered under FAST–41:

- *Enhanced coordination:* When a proposed project becomes a covered project under FAST–41, the lead or facilitating agency, as applicable, must identify all agencies and governmental entities likely to have financing, environmental reviews, authorizations, or other responsibilities with respect to the covered project, and invite all Federal agencies to become participating or cooperating agencies (42 U.S.C. 4370m–2(a)(2)(A)(ii)). The lead or facilitating agency, as applicable, in consultation with each coordinating and participating agency, shall establish a project-specific CPP for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project (42 U.S.C. 4370m–2(c)(1)(A)). Advanced coordination has been known to help improve the efficiency of reviews by allowing early communication of project goals and discussion of potential alternatives with permitting agencies and stakeholders which can lead to environmental reviews and authorizations being completed earlier by identifying and addressing potential causes of delay earlier in the process.
- *Enhanced visibility and predictability:* The lead agency, within a CPP, will develop a permitting timetable for each covered project, which establishes scheduled dates for all required Federal environmental reviews and authorizations (as well as for State permits and environmental reviews when the State elects to participate in the FAST–41 process) based on project-

specific factors, statutory and regulatory requirements, and historical timeframes for the activities. Scheduled and actual timeframes for government processes will be publicly displayed and tracked on the online Permitting Dashboard. If an environmental review or authorization is delayed, the lead, cooperating, or participating agency is required to update the schedule at least 30 days before the currently reported completion date and the agency will not be allowed to extend the final completion date by more than 30 days without consulting with the project sponsor. The enhanced visibility and predictability leads to greater accountability by Federal agencies. As discussed in the FAST–41 Implementation Guidance, environmental review and authorization schedules for independent regulatory commissions are not subject to review and oversight by project sponsors or other government offices.

- *Enhanced accountability:* Covered projects benefit from high-level oversight on the permitting process from the Executive Director to ensure that Federal agencies follow FAST–41 processes and adhere to established timeframes. If the lead, participating, or cooperating agencies delay the permitting process by more than 150 percent of the original schedule, it must be reported to Congress (42 U.S.C. 4370m–2(c)(2)(D)(iii)).
- *Enhanced public participation:* Specific timeframes have been developed for certain public participation activities, including early coordination for collection of key concerns, public involvement in the development of reasonable alternatives, and public comment periods on draft Environmental Impact Statements (EISs). For example, the lead agency must establish a comment period for draft EISs to be between 45 days and 60 days unless the lead agency, project sponsor, and any cooperating agency agree to a longer deadline or the lead agency, in consultation with each cooperating agency, extends the deadline for good cause (42 U.S.C. 4370m–4(d)(1)).
- *Enhanced legal protections:* The statute of limitations to challenge any Federal authorizations for covered projects is reduced from 6 years to 2 years from the date the authorization is issued by the agency, and future claims pertaining to a Federal environmental review may be brought only if the commenter filed a sufficiently detailed comment and put the lead agency on notice of the issue during the environmental review process. Persons who did not submit comments on the environmental review would not have any standing to challenge the authorization for a covered project (42 U.S.C. 4370m–6(a)).

ii. Costs of the Initiation Fee to Project Sponsors of Covered Projects

We evaluated potential costs and transfer provisions associated with this rulemaking. Cost provisions include consideration of time associated with rule familiarization for stakeholders and time required to complete the FIN. We concluded that the proposed rule would result in a 10-year total cost of $20,637 undiscounted, $18,290 discounted at 3 percent, and $15,847 discounted at 7 percent. The transfer provision accounts for the non-refundable portion of the initiation fee for all FINs as well as the additional fee required from successful project sponsors. We determined that over a 10-year period, the proposed rule would transfer funds from project sponsors to FPISC totaling $78,692,000 undiscounted, $67,963,353 discounted at 3 percent, and $56,794,754 discounted at 7 percent. The costs of the fee are described in greater detail in section IV.A.ii below.

iii. Determination of Amount of Initiation Fee

The initiation fee amount was determined based on an analysis of current and projected FPISC–OED expenditures, a review of the existing portfolio of covered projects, and estimates of the number of new covered projects that will be added in future years. In FY 2017, FPISC–OED had expenditures of approximately $4.75 million and supported 35 projects on the Permitting Dashboard. Of those 35 covered projects, 25 were still in progress while 10 were listed as ''Complete'' at the end of FY 2017. Based on this data, we estimate the FY 2017 cost per FAST–41 covered project was approximately $190,000 ($4.75M/25 covered projects still in progress).

It is important to note that most of the initial set of 35 covered projects were existing projects that were already far along in the environmental review and authorization process when FAST–41 was enacted. As new projects are added, we anticipate additional support and coordination will be needed for newly designated covered projects that are in the early stages of development or the environmental review and authorization process. This enhanced level of support includes early coordination and stakeholder outreach, assisting in the development of CPPs and permitting timetables for the entire permitting process, consulting and facilitating throughout the Federal environmental review and authorization process, and monitoring and assessing Federal agency performance in meeting Federal permitting timetable goals. We estimated that the proposed $200,000 initiation fee per project for project sponsors is sufficient for FPISC–OED to fully carry out its responsibilities under FAST–41, including the additional level of support and coordination needed for newly designated covered projects.

At the beginning of FY 2018, FPISC–OED was overseeing 37 covered projects. Based on estimates of the number of projects that would be completed each year and the number of new covered projects each year, we estimate that FPISC–OED will support 24 new covered projects in FY 2019; 26 new covered projects in FY 2020; 33 new covered projects in FY 2021; 41 new covered projects in FY 2022; and 48 new covered projects each year in FY 2023–2028. Therefore, the annual fee collected would range from $4.80 million in FY 2019 to $9.60 million by FY 2023. This estimate comes from the anticipated increase in visibility of the program from projects successfully going through the FAST–41 process. In addition, we anticipate that by FY 2023 the number of new projects will stay steady at 48 new projects a year because there are a limited number of projects in the country that would be eligible to be covered under FAST–41. Furthermore, FPISC–OED anticipates not all eligible projects will apply to become covered projects.

The analysis assumes a 5 percent charge to provide a reserve fund for the program. OMB established Circular A–25 (User Charges), which promulgated Federal policy regarding the self-sufficiency of all projects.[1] A central goal of OMB Circular A–25 guidelines is to efficiently allocate government resources by at least fully recouping all costs associated with providing the good or service. OMB Circular A–25 guidelines state that all recipients of special benefits from Federal activities will be assessed a fee for services beyond those received by the general public. If existing laws restrict such a fee, agencies will review activities periodically and recommend legislative changes as appropriate. User fees will be collected in advance or at the time of the provision of service. When possible, agencies should set charges as rates rather than fixed amounts. Both direct and indirect costs will be included in

[1] The guidelines were issued under the authority granted by Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 1111) and Executive Orders No. 8248 and 11541. Available at *https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf.*

the calculation of total costs, including salaries and fringe benefits, travel, general overhead, consulting fees, and insurance, among other cost elements.

Public demand for such services varies from year to year. This variation creates challenges because agencies seek to recover the costs of managing programs and the associated services provided to recipients. For this reason, many agencies maintain reserve funds to ensure that sufficient agency funding is available for the continued operation of the agency. In *Federal User Fees: A Design Guide,* the Government Accountability Office (GAO) recommended that maintaining reserve funds can help hedge against sudden or temporary fluctuations in demand and the corresponding costs of operations.[2] As such, we included a reserve fund fee to provide program stability year to year.

The proposed initiation fee would not apply to covered projects that were already identified under FAST–41 and posted to the Permitting Dashboard prior to the effective date of this rule. The effective date would be one day after publication of the final rule. We propose the effective date because it estimates that project sponsors would take only 2.5 hours to familiarize themselves with the rule, complete the FIN, and ensure that their accounting system(s) can transfer the appropriate initiation fee with the FIN. For FY 2019 and beyond, we may reassess the amount of the initiation fee based on early program implementation experience and the number of FINs submitted by project sponsors for proposed covered projects, and to adequately cover the reasonable costs of FPISC–OED.

In addition, FAST–41 places a limit on the fee structure that requires the fee to ''be established in a manner that ensures that the aggregate amount of fees collected for a fiscal year is estimated not to exceed 20 percent of the total estimated costs for the fiscal year for the resources allocated for the conduct of environmental reviews and authorizations covered by this subchapter, as determined by the Director of the Office of Management and Budget'' (42 U.S.C. 4370m–8(c)(3)). Therefore, the total estimated costs for the fiscal year for the conduct of environmental reviews and authorizations covered by the subchapter was calculated by adding the cost for all environmental reviews under the National Environmental Policy Act (NEPA), all authorizations [3] for projects that likely would have been covered under FAST–41, and FPISC–OED costs. Based on CEQ estimates on the average costs of completing EISs ($250,000 to $2 million) and the number of final EISs (FEISs) that were published (162), the cost for environmental reviews under NEPA was estimated to be approximately $182.25 million in FY 2014.[4]

- Environmental reviews costs (low range): Number of FEISs Published in FY 2014 * Low Range for Average Cost of EIS = 162 * $250,000 = $40.5 million
- Environmental reviews costs (high range): Number of FEISs Published in FY 2014 * High Range for Average Cost of EIS = 162 * $2 million = $324 million
- Average cost: (High range + Low rage)/2 = ($40.5 million + $324 million)/2 = $182.25 million

The data for the cost of authorizations for covered projects under FAST–41 is derived from an OMB data call to the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Energy, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of the Interior, the Department of Transportation, the Environmental Protection Agency, the Advisory Council on Historic Preservation, and the U.S. Army Corps of Engineers on August 19, 2014 regarding agencies' budgets for infrastructure permitting and review and other existing agency authorities for financing infrastructure permitting activities. The data collected from agencies is current as of August 17, 2015. The average cost in FY 2014 for authorizations for projects that likely would have been covered under FAST–41 was estimated to be approximately $106.33 million. In addition, the costs for FPISC–OED in FY 2017 were $4.75 million. FY 2017 numbers were used to estimate FPISC–OED costs since the office was not in existence in FY 2014. Therefore, the aggregate amount of fees collected for a fiscal year could not exceed $58.67 million (20 percent of $293.33 million). We estimate that FPISC–OED will have 24 new projects in FY 2019 and by FY 2023 there will be 48 new projects. Therefore, in FY 2019 the aggregate amount of fees collected by FPISC–OED would be $4.80 million ($200,000 * 24 new projects) and by FY 2023 the aggregate amount of fees collected by FPISC–OED would be $9.60 million ($200,000 * 48 new projects). Thus, the aggregate amount of fees would be far less than the 20 percent limit of $58.67 million. We request comments on the calculation of the proposed initiation fee and proposed calculation of future initiation fees.

C. Issues on Which the Permitting Council Seeks Comment

Although we welcome comment on any aspect of this proposal, FPISC is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. *Initiation Fee Non-Refundable and Due in Two Parts:* The proposal to have the initiation fee be non-refundable and paid in two parts—$5,000 of the fee at the time the project sponsor submits the FIN, and then $195,000 within 10 business days of the Federal facilitating or lead agency's determination, the Executive Director's final determination, or the Council's opinion that the project is a covered project under FAST–41.

2. *Calculation of Initiation Fee:* The methodology and assumptions of the calculation of the initiation fee as discussed in III.B.iii.

3. *Exclusions:* The exclusions to the initiation fee as discussed in section III.A.iii.

D. Public Participation

We will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section.

1. *Submitting Comments via Regulations.gov:* The *regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to FPISC–OED and GSA staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, FPISC–OED and GSA will use this information to contact you. If FPISC–OED and GSA cannot read your comment due to technical difficulties and cannot contact you for clarification,

[2] Federal User Fees: A Design Guide, GAO–08–386SP, May 2008. Available at: *http://www.gao.gov/new.items/d08386sp.pdf.*

[3] As defined in 42 U.S.C. 4370m(3) authorizations ''means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency or, in the case of a State that chooses to participate in the environmental review and authorization process in accordance with [42 U.S.C. 4370m–2(c)(3)(A)], a State agency.''

[4] The NEPA Task Force Report to Council on Environmental Quality: *Modernizing NEPA Implementation* (Sept. 2003) at pp. 65–66.

we may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

FPISC–OED and GSA processes submissions made through *regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *regulations.gov* provides after you have successfully uploaded your comment.

2. *Submitting Comments via Email or Mail:* Comments and documents submitted via email, hand delivery, or mail also will be posted to *regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to FPISC–OED and GSA. Email submissions are preferred. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted electronically should be provided in PDF (preferred), Microsoft Word, or Excel file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

(a) *Campaign Form Letters:* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

(b) *Confidential Business Information:* Any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. We will make our own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to us when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is our policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Docket

The docket is available for review at *http://www.regulations.gov* and includes **Federal Register** notices, public comments, and other supporting documents and materials. All documents in the docket are listed in the *regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. A link to the docket web page can be found at: *https://www.permits.performance.gov/tools/notice-proposed-rule-making-permitting-council-fast-41-initiation-user-fee*. This web page contains a link to the docket for this proposed rule on the *regulations.gov* site. The *regulations.gov* web page also contains instructions on how to access all documents, including public comments, in the docket.

IV. Regulatory Review

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This rule is a ''significant regulatory action'' under Executive Order 12866 so it was submitted to OMB for review.

We evaluated the potential costs and benefits that could result from this rulemaking. As presented in Table 1, we estimate that the proposed rule would result in a 10-year total cost of $20,637 undiscounted, $18,290 discounted at 3 percent, and $15,847 discounted at 7 percent. On an annualized basis, the proposed rule would result in a cost of $2,064 undiscounted, $2,144 discounted at 3 percent, and $2,256 discounted at 7 percent. The transfer provision accounts for the non-refundable portion of the initiation fee for all FINs as well as the additional fee required from successful project sponsors. We determined that over a 10-year period, the proposed rule will tranfer funds from project sponsors to FPISC–OED totaling $78.692 million undiscounted, $67.963 million discounted at 3 percent, and $56.795 million discounted at 7 percent. On an annualized basis, the transfer provision amounts to $7.869 million undiscounted, $7.967 million discounted at 3 percent, and $8.086 million discounted at 7 percent. Although we were unable to quantify benefits directly attributable to the fee, we do understand that there are significant benefits from FPISC–OED's services and the fee will allow the program to continue in future years. We invite comments from the public on how to estimate these benefits.

i. Scope and Key Inputs to the Analysis

We estimated that rule familiarization would occur only during the first year of the analysis period and would require familiarization by a manager and by an environmental engineer. When determining the initiation fee, we assumed there would be 48 projects

whose sponsors would submit FINs each year. While we expect the program to reach this level over time, fewer than 48 FINs are expected for the first few years as the program ramps up and expands. For the purposes of this analysis, we estimate that 24 FINs will be received from project sponsors in FY 2019, 26 FINs will be received in FY 2020, 33 FINs will be received in FY 2021, 41 FINs will be received in FY 2022, and 48 FINs will be received each year in FY 2023 through FY 2028.

We evaluated changes in the opportunity cost of time for project sponsors and other stakeholders using wage rates to represent the value of managers' or engineers' time that, in the absence of the rule, would not have been spent on rule familiarization or completing FINs to gather fee amounts. This analysis uses wage rates for General and Operations Managers (occupation code 11–1021) in the Utilities sector (North American Industry Classification System code 22) as well as wage rates for Environmental Engineers (occupation code 17–2081) in the Utilities sector (NAICS code 22). The source for wages is the median hourly wage data (May 2016) from the U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES).[5] The BLS does not publish data on fringe benefits for specific occupations, but it does for the broad industry groups in its Employer Costs for Employee Compensation (ECEC) release. This analysis uses an hourly wage of $58.16 for managers and an hourly wage of $41.10 for environmental engineers. For private industry, benefits account for 30.4 percent of employer costs,[6] while the remaining 69.6 percent of employer costs are directed towards salary. Therefore, we applied a loaded wage rate factor of 1.44 to account for total costs to employers (inclusive of benefits) when calculating cost associated with rule familiarization and application completion (1.44 = 1 + 30.9/69.6).

ii. Costs

Rule familiarization is expected to require one hour of a manager's time and one hour of an environmental engineer's time for each project sponsor or other interested stakeholder. Because 24 FINs are expected in FY 2019, and because rule familiarization only takes place in FY 2019, the proposed rule will require a total of 24 hours of managers' time and 24 hours of environmental engineers' time at the appropriate wage rates (as discussed in the ''*Scope and Key Inputs to the Analysis*'' section of this proposed rule). Therefore, over the 10-year analysis period, the only costs associated with rule familiarization occur in FY 2019 and amount to $3,423 (24 projects × (1 hour of time required for manager's familiarization × $58.16 wage for manager × 1.44 loaded wage rate factor) + (1 hour of time required for environmental engineer's familiarization × $41.10 wage for environmental engineer × 1.44 loaded wage rate factor)).

There are also costs associated with the additional time required for project sponsors to complete the FIN as a result of the changes introduced by this proposed rule, namely gathering an initiation fee. We estimate that program sponsors in each year will require 0.5 hours of a manager's time at the appropriate wage rate (as discussed in the ''*Scope and Key Inputs to the Analysis*'' section of this proposed rule) as a result of the new FIN elements. We expect the number of FINs to reach 48 by FY 2023, but expect fewer than 48 FINs each year between FY 2019 and FY 2022. The 10-year total undiscounted cost of time associated with FIN completion is $17,214. This is calculated by multiplying the 0.5 hours of managers' time by the associated wage rate (including accounting for the loaded wage rate factor) to get $41.78 (= 0.5 × 1.44 × $58.16), then multiplying this amount by the number of FINs expected in each year. For the purposes of this analysis, we estimate that 24 FINs will be received from project sponsors in FY 2019, 26 FINs will be received in FY2020, 33 FINs will be received in FY 2021, 41 FINs will be received in FY 2022, and 48 FINs will be received each year in FY 2023 through FY 2028. The total cost across all years is $17,214.

Table 1 of this proposed rule shows the combined costs of rule familiarization and FIN completion. As presented in Table 1, the proposed rule would result in a 10-year total cost of $20,637 undiscounted, $18,290 discounted at 3 percent, and $15,847 discounted at 7 percent. On an annualized basis, the proposed rule would result in an undiscounted cost of $2,064, $2,144 discounted at 3 percent, and $2,256 discounted at 7 percent. Rule famliarization costs are assumed to occur only in FY 2019, and therefore are not discounted at either 3 percent or 7 percent. Costs associated with FIN completion occur each year and are discounted.

TABLE 1—SUMMARY OF THE TOTAL COSTS OF THE PROPOSED RULE

[2016$]

Year	Rule familiarization	FIN completion	Total costs [(a)]	Discounted	
				Discounted at 3%	Discounted at 7%
2018	$3,423	$1,003	$4,426	$4,426	$4,426
2019	N/A	1,086	1,086	1,055	1,015
2020	N/A	1,379	1,379	1,300	1,204
2021	N/A	1,713	1,713	1,568	1,398
2022	N/A	2,006	2,006	1,782	1,530
2023	N/A	2,006	2,006	1,782	1,530
2024	N/A	2,006	2,006	1,782	1,530
2025	N/A	2,006	2,006	1,782	1,530
2026	N/A	2,006	2,006	1,782	1,530
2027	N/A	2,006	2,006	1,782	1,530
Total	3,423	17,214	20,637	18,290	15,847
Annualized			2,064	2,144	2,256

Notes: [(a)] Total cost values may not equal the sum of the components due to rounding.

[5] U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS). Occupational Employment Statistics (OES). National Industry-Specific Occupational Employment and Wage Estimates. May 2016. Available at: *https://www.bls.gov/oes/current/naics2_22.htm#11-0000* (accessed February 8, 2018).

[6] U.S. Department of Labor, Bureau of Labor Statistics (BLS). Employer Costs for Employee Compensation—September 2017. December 15, 2017. *https://www.bls.gov/news.release/pdf/ecec.pdf* (accessed February 16, 2018).

iii. Benefits

In considering the potential impacts of the proposed rule, we anticipate that there will be no change in potential benefits associated with this rule. Benefits are not quantified in this analysis. However, the proposed rule is associated with benefits in that it allows for the continuation of the FPISC–OED's services. An initiation fee is necessary because as an oversight council, FPISC–OED is responsible for implementing the provisions of FAST–41 by facilitating and institutionalizing the transparency, accountability, and coordination among Federal agencies related to the Federal environmental review and authorization process. The fee allows FPISC–OED to carry out its obligations to improve the infrastructure permitting process. Specifically, an initiation fee would allow FPISC to continue to produce the following benefits for projects found to be ''covered'' under FAST–41:

• *Enhanced coordination:* When a proposed project becomes a covered project under FAST–41, the lead or facilitating agency, as applicable, must identify all agencies and governmental entities likely to have financing, environmental reviews, authorizations, or other responsibilities with respect to the covered project, and invite all Federal agencies to become participating or cooperating agencies (42 U.S.C. 4370m–2(a)(2)(A)(ii)). The lead or facilitating agency, as applicable, in consultation with each coordinating and participating agency, shall establish a project-specific CPP for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project (42 U.S.C. 4370m–2(c)(1)(A)). Advanced coordination has been known to help improve the efficiency of reviews by allowing early communication of project goals and discussion of potential alternatives with permitting agencies and stakeholders which can lead to environmental reviews and authorizations being completed earlier by identifying and addressing potential causes of delay earlier in the process.

• *Enhanced visibility and predictability:* The lead agency, within a CPP, will develop a permitting timetable for each covered project, which establishes scheduled dates for all required Federal environmental reviews and authorizations (as well as for State permits and environmental reviews when the State elects to participate in the FAST–41 process) based on project-specific factors, statutory and regulatory requirements, and historical timeframes for the activities. Scheduled and actual timeframes for government processes will be publicly displayed and tracked on the online Permitting Dashboard. If an environmental review or authorization is delayed, the lead, cooperating, or participating agency is required to update the schedule at least 30 days before the currently reported completion date and the agency will not be allowed to extend the final completion date by more than 30 days without consulting with the project sponsor. The enhanced visibility and predictability leads to greater accountability by Federal agencies. As discussed in the FAST–41 Implementation Guidance, environmental review and authorization schedules for independent regulatory commissions are not subject to review and oversight by project sponsors or other government offices.

• *Enhanced accountability:* Covered projects benefit from high-level oversight on the permitting process from the Executive Director to ensure that Federal agencies follow FAST–41 processes and adhere to established timeframes. If the lead, participating or cooperating agencies delay the permitting process by more than 150 percent of the original schedule, it must be reported to Congress (42 U.S.C. 4370m–2(c)(2)(D)(iii)).

• *Enhanced public participation:* Specific timeframes have been developed for certain public participation activities, including early coordination for collection of key concerns, public involvement in the development of reasonable alternatives, and public comment periods on draft EISs. For example, the lead agency must establish a comment period for draft EISs to be between 45 days and 60 days unless the lead agency, project sponsor, and any cooperating agency agree to a longer deadline or the lead agency, in consultation with each cooperating agency, extends the deadline for good cause (42 U.S.C. 4370m–4(d)(i)).

• *Enhanced legal protections:* The statute of limitations to challenge any Federal authorizations for covered projects is reduced from 6 years to 2 years from the date the authorization is issued by the agency, and future claims pertaining to a Federal environmental review may be brought only if the commenter filed a sufficiently detailed comment and put the lead agency on notice of the issue during the environmental review process. Persons who did not submit comments on the environmental review would not have any standing to challenge the authorization for a covered project (42 U.S.C. 4370m–6(a)).

B. Paperwork Reduction Act

This rulemaking does not include any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This proposed rule establishes a user fee for voluntary use of Permitting Council services for the purposes of streamlining Federal environmental reviews and authorizations for covered infrastructure projects. Entities may still receive Federal environmental reviews and authorizations without the use of Permitting Council services.

This proposed rule may affect up to several dozen entities at any given time. Based on the current list of 37 covered projects in NAICS codes 2211 (Electric power generation, transmission and distribution) and 2212 (Natural gas distribution), approximately one third count as small entities according to Small Business Administration (SBA) size standards. Therefore, this rule will have an impact on a substantial number of small entities. However, this rule will not have a significant economic impact on those entities. The costs of the rule occur across two categories (rule familiarization and application completion) and at most, have an impact of $185 per firm ($143 for rule familiarization and $42 for application completion). The standard threshold for a significant economic impact is considered 1 percent of a firm's revenue. Of the 37 current covered projects, no project sponsor has revenue less than $42 million.[7] With rule costs of $185, these only account for less than 0.0004 percent of revenue (= 185/42,000,000). Even when considering the fee amount of $200,000, the rule only accounts for 0.5 percent of revenue. No current or future entity in these NAICS codes likely has revenues such that this amount would constitute an undue burden and furthermore, participation in this program is voluntary and no firm is required to pay the fee discussed in this proposed rulemaking in order to receive a Federal environmental review or authorization (although other fees may apply based on specific

[7] Revenue estimates were gathered from publicly available revenue data or project sponsor annual reports.

environmental review or authorization and agency requirements).

For the reasons stated above, we certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (URMA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a) and (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. This proposed rule does not contain a Federal intergovernmental or private sector mandate, as those terms are defined in UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, ''Federalism,'' published at 64 FR 43255, on August 4, 1999, imposes certain requirements on agencies formulating and implementing policies and regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and then carefully assess the necessity for such actions. The Executive Order also requires agencies to have a process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. We examined this proposed rule and have determined that, if promulgated, it will not pre-empt State law. This action impacts project sponsors of FAST–41 covered projects. Accordingly, no further action is required by Executive Order 13132.

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

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' published at 65 FR 67249, on Nov. 9, 2000, reaffirms the Federal government's commitment to tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all agencies consult with the Indian tribes and respect tribal sovereignty as they develop policy on issues that impact Indian communities. This proposed rule will allow a tribal government, or a consortium of tribal governments, to apply as project sponsors for an infrastructure project to become a FAST–41 covered project, and covered projects may be implemented on tribal lands. In addition, a tribal government or a consortium of tribal governments may be asked by a lead agency to become a cooperating or participating agency on a FAST–41 covered project. On November 30, 2017, the Executive Director of the Permitting Council sent letters to 567 federally-recognized tribes requesting consultation on this proposed rule. The Muscogee (CREEK) Nation provided a comment that requested an automatic exemption from the initiation fee for tribal governments proposing projects on trust property under FAST–41.

The United States government has specific responsibilities to each Tribe based on treaties, statutes, or other sources. Consistent with these responsibilities, the trust relationship, and the government-to-government relationship between the Federal government and federally-recognized tribes, the Federal government often provides services to tribes relating to the protection of trust assets at no cost. Therefore, the proposed rule includes an exemption for tribal grants proposing projects on trust property under FAST–41.

G. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' published at 66 FR 28355 on May 22, 2001, requires Federal agencies to prepare and submit to OMB's Office of Information and Regulatory Affairs (OIRA) a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule or regulation, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

We have preliminarily concluded that this regulatory action is not a ''significant energy action'' because the proposed rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, we have not prepared a Statement of Energy Effects for this proposed rule.

H. National Environmental Policy Act

Each infrastructure project that is covered under FAST–41 requires Federal agencies to render certain decisions. Such Federal agencies are required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) when making those decisions. This rulemaking simply imposes fees on those project sponsors applying to become a covered project under FAST–41; therefore, by itself, this rulemaking would not have any effect on the quality of the environment.

I. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This rule is not expected to be subject to the requirements of Executive Order 13771, published at 82 FR 9339, on February 3, 2017.

List of Subjects in 40 CFR Part 1900

Administrative practice and procedure, Fees, Reporting and recordkeeping requirements.

Dated: August 27, 2018.

Angela F. Colamaria,

Acting Executive Director, Federal Permitting Improvement Steering Council—Office of the Executive Director (FPISC–OED).

■ For the reasons stated in the preamble, under the authority of 42 U.S.C. 4370m *et seq.,* FPISC proposes to add chapter IX to title 40 of the Code of Federal Regulations as set forth below:

CHAPTER IX—FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

PART 1900—COORDINATION OF ENVIRONMENTAL REVIEWS AND AUTHORIZATIONS—FEES

Subpart A—General

Sec.
1900.1 Purpose and scope.
1900.2 Definitions.
1900.3 Initiation fee.

Subpart B—[Reserved]

Authority: 42 U.S.C. 4370m *et seq.*

Subpart A—General

§ 1900.1 Purpose and scope.

The purpose of this part is to establish an initiation fee to reimburse the Federal Permitting Improvement Steering Council-Office of the Executive Director (FPISC–OED) for costs incurred in the coordination of environmental reviews and authorizations under Title 41 of the Fixing America's Surface Transportation Act of 2015 (FAST–41) (42 U.S.C. 4370m *et seq.*). As of [date one day after the publication of the final rule in the **Federal Register**], any project sponsor submitting a FAST–41 initiation notice must comply with all applicable requirements of this part.

§ 1900.2 Definitions.

As used in this part—

Agency means the same as the term in 5 U.S.C. 551.

Business day means Monday through Friday and excludes Federal legal holidays.

Covered project means the same as the term in 42 U.S.C. 4370m(6).

Environmental Review Improvement Fund means the fund established in the Treasury of the United States to deposit any initiation fees collected by FPISC–OED.

Executive Director means the same as the term in 42 U.S.C. 4370m(12).

Facilitating agency means the same as the term in 42 U.S.C. 4370m(13).

FAST–41 means Title 41 of the Fixing America's Surface Transportation Act, codified at 42 U.S.C. 4370m through 4370m–12.

FAST–41 initiation notice (FIN) means a FAST–41 initiation notice of a proposed covered project that a project sponsor submits to the Federal facilitating or lead agency and FPISC–OED.

FPISC–OED means the Federal Permitting Improvement Steering Council-Office of the Executive Director that supports the Federal Permitting Improvement Steering Council in implementing the provisions of FAST–41.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Initiation fee means a non-refundable payment submitted by a project sponsors in two parts: When the sponsor submits a FAST–41 initiation notice, and upon determination that the project is a covered project under FAST–41.

Lead agency means the same as the term in 42 U.S.C. 4370m(15).

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Project sponsor means the same as the term in 42 U.S.C. 4370m(18).

§ 1900.3 FAST—41 initiation fee.

(a) *Initiation fee.* A project sponsor shall submit an initiation fee of $200,000, $5,000 of which the project sponsor shall pay upon submission of a FIN and $195,000 of which the project sponsor shall pay within 10 business days of being notified that a project is a covered project.

(b) *Adjustment of initiation fee.* Each fiscal year, beginning in FY 2019, the FPISC–OED may reassess and adjust the amount of the initiation fee described in paragraph (a) of this section based on program implementation experience and the number of infrastructure projects seeking to become ''covered projects'' under FAST–41, and to adequately cover reasonable costs of the FPISC–OED. The FPISC–OED will publish this amount in a **Federal Register** document.

(c) *Exemptions.* The initiation fee shall be excluded for the following parties:

(1) Indian tribe proposing covered projects on trust property; and

(2) Other parties determined by FPISC–OED, in whole or in part, for which an initiation fee would impose an undue financial burden or is otherwise determined to be inappropriate. A project sponsor must submit a petition for exemption which provides sufficient evidence to demonstrate that the initiation fee would be economically burdensome or inappropriate. FPISC–OED will consider the following factors in making an exemption determination:

(i) The nature and cost of the infrastructure project;

(ii) The financial impact of the initiation fee on the project sponsor;

(iii) The financial resources of the project sponsor; and

(iv) The type of operations of the project sponsor.

(d) On or before 30 days from the date that a project sponsor submits a complete petition for exemption, the Executive Director shall decide whether FPISC–OED will approve the petition for exemption based on the factors set forth in paragraph (c)(2) of this section. Upon a determination, the Executive Director shall notify in writing a project sponsor of the determination, including a statement of reasons.

(e) *Use of initiation fee.* The collected initiation fees will be available to FPISC–OED, without appropriation or fiscal year limitation, solely for the purposes of administering and implementing 42 U.S.C. Chapter 44, Subchapter IV: Federal Permitting Improvement, including the expenses of the Council.

(f) *Collection.* All fee amounts collected under paragraph (a) of this section will be deposited into the Environmental Review Improvement Fund.

Subpart B—[Reserved]

[FR Doc. 2018–19032 Filed 8–31–18; 8:45 am]

BILLING CODE 6820–BR–P

Notices

Federal Register
Vol. 83, No. 171
Tuesday, September 4, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of a Public Meeting of the Vermont Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of mini-briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a mini-briefing of the Vermont Advisory Committee to the Commission will convene on Tuesday, September 18, 2018, at 11:00 a.m. (EDT) in Room 11 at the Vermont State House, 115 State Street, Montpelier, VT 05633. The purpose of the mini-briefing is to hear presentations from advocates and experts on judicial disparities in Vermont and continue project planning.

DATES: Tuesday, September 18, 2018 (EDT) at 11:00 a.m. (EDT).

ADDRESSES: Vermont State House, Room 11, 115 State Street, Montpelier, VT 05633.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ero@usccr.gov* or by phone at 303–866–1040.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the meeting so that members of the public may address the Committee after the planning meeting. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Thursday, October 18, 2018. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://facadatabase.gov/committee/meetings.aspx?cid=278* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Tuesday, September 18, 2018 at 11:00 a.m. (EDT)

I. Roll Call
II. Presentations from Participants on Judicial Disparities in Vermont
III. Project Planning
IV. Other Business
V. Open Comment
VI. Adjournment

Dated: August 28, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–19037 Filed 8–31–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 planning meeting of the New Hampshire Advisory Committee to the Commission will convene at 4:00 p.m. (EDT) on Tuesday, September 11, 2018, in Room P435, University of New Hampshire, 88 Commercial Street, Manchester, NH. The purpose of the meeting is for project planning.

DATES: Tuesday, September 11, 2018, at 4:00 p.m. (EDT).

ADDRESSES: University of New Hampshire, Room P435, 88 Commercial St., Manchester, NH 03101.

FOR FURTHER INFORMATION CONTACT: Barbara J. Delaviez, Designated Federal Official (DFO), *ero@usccr.gov,* 202–376–7533.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=262,* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

- Welcome and Roll-call
  Barbara J. Delaviez, Deputy Director and DFO, Eastern Regional Office
- Project Planning
- Next Steps
- Open Comment

Dated: August 28, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–19036 Filed 8–31–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New York Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 New York Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EDT) on: Friday, September 14, 2018. The purpose of the meeting is to discuss topics of study.

DATES: Friday, September 14, 2018 at 12:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: David Barreras, at *dbarreras@usccr.gov* or by phone at 312–353–8311.

SUPPLEMENTARY INFORMATION:

Public Call-In Information:

Conference call-in number: 1–888–417–8465 and conference ID# 5308701.

Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–417–8465 and conference ID# 5308701. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). 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 conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–888–417–8465 and conference ID# 5308701.

Members of the public are invited to make statements during the open comment period of the meetings or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Midwest Regional Office, U.S. Commission on Civil Rights, 230 S. Dearborn Street, Suite 2120, Chicago, IL 60604, faxed to (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov*. Persons who desire additional information may contact the Midwest Regional Office at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=265;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwest Regional Office at the above phone numbers, email or street address.

Agenda

Friday, September 14

- Open—Roll Call
- Discussion of Study Topics
- Open Comment
- Adjourn

Dated: August 29, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–19113 Filed 8–31–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of roundtable 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 roundtable meeting of the Massachusetts Advisory Committee to the Commission will convene on Friday, September 14, 2018, at 12:00 p.m. (EDT) at McCarter & English, LLP, 265 Franklin Street, Boston, MA 02110. The purpose of the roundtable meeting is to hear presentations from advocates and experts on human trafficking and continue project planning.

DATES: Friday, September 14, 2018 (EDT) at 12:00 p.m. (EDT).

ADDRESSES: McCarter & English, LLP, 265 Franklin Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ero@usccr.gov* or by phone at 303–866–1040.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the meeting so that members of the public may address the Committee after the planning meeting. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Monday, October 15, 2018. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://facadatabase.gov/committee/meetings.aspx?cid=254* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Friday, September 14, 2018 at 12:00 p.m. (EDT)

I. Roll Call

II. Presentations from Participants on Human Trafficking

III. Project Planning

IV. Other Business

V. Open Comment

VI. Adjournment

Dated: August 28, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–19035 Filed 8–31–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–53–2018]

Foreign-Trade Zone (FTZ) 127—West Columbia, South Carolina; Notification of Proposed Production Activity; Constantia Blythewood, LLC; (Flexible Packaging and Engineered Industrial Films); Blythewood, South Carolina

The Richland-Lexington Airport District, Columbia Metropolitan Airport, grantee of FTZ 127, submitted a notification of proposed production activity to the FTZ Board on behalf of Constantia Blythewood, LLC (Constantia Blythewood), located in Blythewood, South Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 27, 2018.

The Constantia Blythewood facility is located within Subzone 127E. The facility is used for the production of flexible packaging, engineered industrial films and related items for the food, beverage and personal care industries. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Constantia Blythewood from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Constantia Blythewood would be able to choose the duty rates during customs entry procedures that apply to: Paints and varnishes based on synthetic polymers; acrylic polymers; plastic films; self-adhesive paperboard; coated, impregnated, or covered printing paper and paperboard; foil-backed paperboard; backed and decorated aluminum foil; and, aluminum foil rolled with underlay (duty rate ranges from duty-free to 4.2%). Constantia Blythewood would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Paints and varnishes based on polyester; paints and varnishes based on chemically modified natural polymers and dissolved in a non-aqueous medium; acrylic polymers; acrylic polymer plates; propylene polymer plates, sheets, films, foils and strips; polymers of vinyl chloride; plastic plates, sheets, films, foils and strips with textile components; plastic articles for decoration; paperboard; condenser paper; rolls of embossed paper; self-adhesive paper; paper covered with a substrate that will allow for lamination to another material; printing paper weighing over 30g; aluminum can body and lid stock; rolled aluminum foil of a thickness exceeding 0.01mm; embossed aluminum foil, not backed; etched capacitor foil; backed aluminum that has been covered or decorated; and, photographic films and dry plates (duty rate ranges from duty-free to 5.3%). The request indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 15, 2018.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 28, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–19099 Filed 8–31–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–884]

Glycine From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of glycine from India. The period of investigation (POI) is January 1, 2017, through December 31, 2017. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 4, 2018.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann or Chelsey Simonovich, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0698 or (202) 482–1979, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 25, 2018.[1] On June 7, 2018, in accordance with section 703(c)(1)(A) of the Act, Commerce postponed the preliminary determination of this investigation to August 27, 2018.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's

[1] *See Glycine from India, the People's Republic of China, and Thailand: Initiation of Countervailing Duty Investigation,* 83 FR 18002 (April 25, 2018) (*Initiation Notice*).

[2] *See Glycine from India, the People's Republic of China, and Thailand: Postponement of Preliminary Determinations of Countervailing Duty Investigations,* 83 FR 26415 (June 7, 2018).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Glycine from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is glycine from India. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*

For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* scope in Appendix I.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of glycine from India based on a request made by GEO Specialty Chemicals, Inc. and Chattem Chemicals, Inc. (the petitioners).[8] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than January 7, 2019, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates, and any rates based entirely under section 776 of the Act. In this investigation, we calculated individual estimated countervailable subsidy rates for Kumar Industries, India and Paras Intermediates Private Limited that are not zero, *de minimis,* or based entirely on facts available. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all-others'' rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, for the ''all-others'' rate, we calculated a simple average of the two responding companies' rates.[9]

Preliminary Determination

We preliminarily determine that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Kumar Industries, India	26.07
Paras Intermediates Private Limited	3.03
All-Others	14.55

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.203(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name,

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Glycine from India: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] *See* Petitioners' Letter, ''Glycine from Thailand: Request to Align the Countervailing Duty Investigation Final Determination with the Antidumping Duty Investigation Final Determination,'' dated June 29, 2018.

[9] *See Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination,* 83 FR 3120 (January 23, 2018).

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 27, 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.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56–40–6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.4300. Sodium glycinate is classified in the HTSUS under 2922.49.8000. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–19096 Filed 8–31–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–549–838]

Glycine From Thailand: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of glycine from Thailand. The period of investigation is January 1, 2017, through December 31, 2017. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 4, 2018.

FOR FURTHER INFORMATION CONTACT: George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2623.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 25, 2018.[1] On June 7, 2018, in accordance with section 703(c)(1)(A) of the Act, Commerce postponed the preliminary determination of this investigation to August 27, 2018.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is glycine from Thailand. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*

For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* scope in Appendix I.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs at issue in this investigation, Commerce examined whether there is a subsidy, *i.e.,* a financial contribution by

[1] *See Glycine from India, the People's Republic of China, and Thailand: Initiation of Countervailing Duty Investigations,* 83 FR 18002 (April 25, 2018) (*Initiation Notice*).

[2] *See Glycine from India, the People's Republic of China, and Thailand: Postponement of Preliminary Determinations of Countervailing Duty Investigations,* 83 FR 26415 (June 7, 2018).

[3] *See* Memorandum, ''Preliminary Negative Determination of the Countervailing Duty Investigation of Glycine from Thailand,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

an ''authority'' that gives rise to a benefit to the recipient, and whether the subsidy is specific.[7]

Preliminary Negative Determination of Critical Circumstances

In accordance with section 703(e)(1) of the Act, we preliminary determine that critical circumstances do not exist with respect to imports of glycine from Thailand. For a full description of the methodology and results of Commerce's analysis, *see* the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of glycine from Thailand based on a request made by GEO Specialty Chemicals, Inc. and Chattem Chemicals, Inc. (the petitioners).[8] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than January 7, 2019, unless postponed.

Preliminary Determination

We preliminarily determine that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Newtrend Food Ingredient (Thailand) Co., Ltd	0.00

Consistent with section 703(d) of the Act, Commerce has not calculated an estimated weighted-average subsidy rate for all other producers/exporters because it has not made an affirmative preliminary determination.

Suspension of Liquidation

Because Commerce preliminarily determines that no countervailable subsidies are being provided to the production or exportation of subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation of any such entries.

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] *See* Petitioners' letter, ''Glycine from Thailand: Request to Align the Countervailing Duty Investigation Final Determination with the Antidumping Duty Investigation Final Determination,'' dated June 29, 2018.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of the public announcement of, or, where there is no public announcement, within five days of the date of publication of, the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce's negative preliminary determination is based on non-use and/or the finding that certain programs are not countervailable, there are no calculations to disclose with regard to the individually examined company in this investigation.[9]

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

[9] *See* Preliminary Decision Memorandum.

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will make its final injury determination 75 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 27, 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.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including but not limited to sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56–40–6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.4300. Sodium glycinate is classified in the HTSUS under 2922.49.8000. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–19098 Filed 8–31–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–081]

Glycine From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of glycine from the People's Republic of China (China) for the period of investigation January 1, 2017, through December 31, 2017. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 4, 2018.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3813 or (202) 482–1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 25, 2018.[1] On June 7, 2018, in accordance with section 703(c)(1)(A) of the Act, Commerce postponed the preliminary determination of this investigation to August 27, 2018.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is glycine from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*

For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* scope at Appendix I.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] Commerce notes that, in making these findings, we relied in total on facts available and, because we find that the mandatory respondents did not act to the best of their ability to respond to Commerce's requests for information, we drew an adverse inference in selecting from among the facts otherwise available.[8] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

All-Others Rate

Sections 703(d)(1)(A) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated subsidy rate for all-other producers or exporters. In this investigation, we preliminarily determined the individually estimated subsidy rate for each of the individually examined respondents based entirely on facts available under section 776 of the Act. There is no other information on the record with which to determine an all-others rate. Consequently, pursuant to section 705(c)(5)(A)(ii) of the Act, we have established the all-others rate by applying the countervailable subsidy rate assigned to the mandatory respondents. For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

We preliminarily determine that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
JC Chemicals Limited	144.01
Simagchem Corp	144.01
All-Others	144.01

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend

[1] *See Glycine from India, the People's Republic of China, and Thailand: Initiation of Countervailing Duty Investigations,* 83 FR 18002 (April 25, 2018) (*Initiation Notice*).

[2] *See Glycine from India, the People's Republic of China, and Thailand: Postponement of Preliminary Determinations of Countervailing Duty Investigations,* 83 FR 26415 (June 7, 2018).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Glycine from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated August 27, 2018. (Preliminary Scope Decision Memorandum).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] *See* sections 776(a) and (b) of the Act.

liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice, in accordance with 19 CFR 351.224(b).

Verification

Because the examined respondents in this investigation did not provide information requested by Commerce and we preliminarily determine each of the examined respondents to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 25 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 27, 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.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including but not limited to sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56–40–6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.4300. Sodium glycinate is classified in the HTSUS under 2922.49.8000. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–19097 Filed 8–31–18; 8:45 am]

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[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Post-Disaster Research Methods Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) and the National Center for Disaster Medicine and Public Health (NCDMPH) will hold an open meeting on Thursday, September 6, 2018 from 8:30 a.m. to 5:00 p.m. Eastern Time and on Friday, September 7, 2018 from 8:30 a.m. to 12:00 p.m. Eastern Time. The primary purpose of this meeting is to discuss the state-of-the-practice in post-disaster field data collection methods, including sampling methodologies across multiple disciplines. The agenda will be posted on the NIST website at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/hurricane-maria-ncst.*

DATES: The meeting will be held on Thursday, September 6, 2018 from 8:30 a.m. to 5:00 p.m. Eastern Time and on Friday, September 7, 2018 from 8:30 a.m. to 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held in person and via teleconference at the Henry M. Jackson Foundation Headquarters, 6720A Rockledge Drive, Bethesda, Maryland 20817. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Banner, Administrative Office Assistant, Community Resilience Program, Engineering Laboratory, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, Maryland 20899–8604. Ms. Banner's email address is *Melissa.Banner@nist.gov;* and her phone number is (301) 975–8912.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology (NIST) and the National Center for Disaster Medicine and Public Health (NCDMPH) will hold an open meeting on Thursday, September 6, 2018 from 8:30 a.m. to 5:00 p.m. Eastern Time and on Friday, September 7, 2018 from 8:30 a.m. to 12:00 p.m. Eastern Time. The primary purpose of this meeting is to discuss the state-of-the-practice in post-disaster field data collection methods including sampling methodologies across multiple disciplines. The agenda will be posted on the NIST website at *https://*

www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/hurricane-maria-ncst.

To participate in the meeting, please submit your first and last name, email address, and phone number to Melissa Banner at *Melissa.Banner@nist.gov* or (301) 975–8912. After pre-registering, participants will be provided with detailed instructions on how to join the meeting in person or remotely. Physical space at this meeting will be limited; 20 members of the public are anticipated to be able to attend in person and will be selected on a first-come, first-served basis. Others may attend via teleconference. Anyone wishing to attend this meeting in person or via teleconference must register by 5:00 p.m. Eastern Time, Tuesday, September 4, 2018, to attend. Please submit your full name, email address, and phone number to Melissa Banner at *Melissa.Banner@nist.gov*; her phone number is (301) 975–8912.

Phillip A. Singerman,

Associate Director for Innovation and Industry Services.

[FR Doc. 2018–19116 Filed 8–31–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting of Sea Turtle Incidental Take in Virginia Chesapeake Bay Pound Net Operations.

OMB Control Number: 0648–0470.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 35.

Average Hours per Response: 10 minutes.

Burden Hours: 165.

Needs and Uses: This request is for extension of a current information collection.

This action would continue the reporting measure requiring all Virginia Chesapeake Bay pound net fishermen to report interactions with endangered and threatened sea turtles, found both live and dead, in their pound net operations. When a live or dead sea turtle is discovered during a pound net trip, the Virginia pound net fisherman is required to report the incidental take to National Marine Fisheries Service (NMFS) and, if necessary, the appropriate rehabilitation and stranding network. This information will be used to monitor the level of incidental take in the state-managed Virginia pound net fishery and ensure that the seasonal pound net leader restrictions (50 CFR 223.206(d)(10)) are adequately protecting listed sea turtles. Based on the number of sea turtle takes anticipated in the Virginia pound net fishery and the available number of Virginia pound net fishermen and pound nets, the number of responses anticipated on an annual basis is 988. This is an increase from the previous information collection (n=483) as we used the maximum number of possible licensed pound net sites per Virginia fishery regulations (n=161) on which to base our information collection estimate, rather than the number of documented sites from NMFS monitoring efforts (n=80), as the latter is outdated and may be an underestimate.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 28, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–19093 Filed 8–31–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Annual Economic Survey of Federal Gulf and South Atlantic Shrimp Permit Holders

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 5, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *docpra@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Liese, Industry Economist, SEFSC, NMFS, 75 Virginia Beach Drive, Miami FL 33149, (305) 365–4109 or *Christopher.Liese@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of this information collection.

NOAA Fisheries, Southeast Fisheries Science Center, annually collects socioeconomic data from commercial fishermen in the Gulf of Mexico and South Atlantic shrimp fisheries who hold one or more permits for harvesting shrimp from federal waters (U.S. Exclusive Economic Zone). Information about revenues, variable and fixed costs, capital investment and other socioeconomic information is collected from a random sample of permit holders. These data are needed to conduct socioeconomic analyses in support of management of the shrimp fishery and to satisfy legal requirements. The data will be used to assess how fishermen will be impacted by and respond to federal regulation likely to be considered by fishery managers.

II. Method of Collection

The information will be collected on paper using a mail survey.

III. Data

OMB Control Number: 0648–0591.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 650 permit holders.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 488 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 28, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–19091 Filed 8–31–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Vessel Monitoring System (VMS) and Related Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 5, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230, or via email at *docpra@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Adam Bailey, National Marine Fisheries Service (NMFS), Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701, (727) 824–5305, *adam.bailey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

The Magnuson-Stevens Fishery Conservation and Management Act authorizes the Gulf of Mexico Fishery Management Council (Gulf Council) and South Atlantic Fishery Management Council (South Atlantic Council) to prepare and amend fishery management plans for any fishery in Federal waters under their respective jurisdictions. NMFS and the Gulf Council manage the reef fish fishery in the Gulf of Mexico (Gulf) under the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico. NMFS and the South Atlantic Council manage the fishery for rock shrimp in the South Atlantic under the FMP for the Shrimp Fishery in the South Atlantic Region. The vessel monitoring system (VMS) regulations for the Gulf reef fish fishery and the South Atlantic rock shrimp fishery may be found at 50 CFR 622.28 and 622.205, respectively.

The FMPs and the implementing regulations contain several specific management areas where fishing is restricted or prohibited to protect habitat or spawning aggregations, or to control fishing pressure. Unlike size, bag, and trip limits, where the catch can be monitored on shore when a vessel returns to port, area restrictions require at-sea enforcement. However, at-sea enforcement of offshore areas is difficult due to the distance from shore and the limited number of patrol vessels, resulting in a need to improve enforceability of area fishing restrictions through remote sensing methods. In addition, all fishing gears are subject to some area fishing restrictions. Because of the sizes of these areas and the distances from shore, the effectiveness of enforcement through over flights and at-sea interception is limited. An electronic VMS allows a more effective means to monitor vessels for intrusions into restricted areas.

The VMS provides effort data and significantly aids in enforcement of areas closed to fishing. All position reports are treated in accordance with NMFS existing guidelines for confidential data. As a condition of authorized fishing for or possession of Gulf reef fish or South Atlantic rock shrimp in or from Federal waters, vessel owners or operators subject to VMS requirements must allow NMFS, the United States Coast Guard, and their authorized officers and designees, access to the vessel's position data obtained from the VMS.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0544.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 927.

Estimated Time per Response: Installation, 5 hours; installation and activation checklist, 20 minutes; power-down exemption requests, 5 minutes; transmission of fishing activity reports, 1 minute; and annual maintenance, 2 hours.

Estimated Total Annual Burden Hours: 2,557.

Estimated Total Annual Cost to Public: $1,466,255 in start-up, transfer, operations, and maintenance costs.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 28, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–19092 Filed 8–31–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Western and Central Pacific Fisheries Convention Vessel Information Family of Forms.

OMB Control Number: 0648–0595.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 55.

Average Hours per Response: WCPFC Area Endorsement Application, 60 minutes; Foreign EEZ Form, 90 minutes; IMO number application, 30 minutes.

Burden Hours: 58.

Needs and Uses: This request is for an extension of a currently approved information collection.

National Marine Fisheries Service (NMFS) has issued regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; 16 U.S.C. 6901 *et seq.*) to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), including implementing the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The regulations include requirements for the owners or operators of U.S. vessels to: (1) Apply for and obtain a WCPFC Area Endorsement if the vessel is used for fishing for highly migratory species on the high seas in the Convention Area (50 CFR 300.212), (2) complete and submit a Foreign Exclusive Economic Zone (EEZ) Form if the vessel is used for fishing for highly migratory species in the Convention Area in areas under the jurisdiction of any nation other than the United States (50 CFR 300.213), and (3) request and obtain an IMO number if the vessel is used for fishing for highly migratory species on the high seas or in areas under the jurisdiction of any nation other than the United States (50 CFR 300.217(c)). An IMO number is the unique number issued for a vessel under the ship identification number scheme established by the International Maritime Organization or, for vessels that are not strictly subject to that scheme, the unique number issued by the administrator of that scheme using the scheme's numbering format, sometimes known as a Lloyd's Register number or LR number.

The application for WCPFC Area Endorsements calls for specified information about the vessel and its operator that is not already collected via the application for high seas fishing permits issued under 50 CFR 300.333. The Foreign EEZ Form calls for specified information about the vessel, its owners and operators and any fishing authorizations issued by other nations. The information required to obtain an IMO number is not submitted to NMFS directly, but to a third party and serves to ensure that IMO numbers are issued for certain categories of vessels.

This information collected under the three requirements is used by NOAA, the U.S. Coast Guard, and the Commission to monitor the size and composition of the HMS fleets in the Convention Area for compliance-related and scientific purposes and to ensure that IMO numbers are issued for certain categories of vessels.

Affected Public: Business or other for-profit organizations.

Frequency: One time and every five years.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 28, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–19089 Filed 8–31–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Uniform Formulary Beneficiary Advisory Panel, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel will take place.

DATES: Open to the public Thursday, September 27, 2018, from 9 a.m. to 12 p.m.

ADDRESSES: The address of the open meeting is the Naval Heritage Center Theater, 701 Pennsylvania Avenue NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Colonel Paul J. Hoerner, USAF, 703–681–2890 (Voice), None (Facsimile), *dha.ncr.health-it.mbx.baprequests@mail.mil* (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Website: *https://health.mil/bap.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of the Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Purpose of the Meeting

The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel) will take place.

Agenda

1. Sign-In
2. Welcome and Opening Remarks
3. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item)
   a. Hepatitis C Agents: Direct Acting Agents Subclass

b. Corticosteroids-Immune Modulators: Atopic Dermatitis Subclass
c. Corticosteroids-Immune Modulators: Adrenocorticotrophic Hormones (ACTH) Subclass
4. Newly Approved Drugs Review
5. Pertinent Utilization Management Issue
6. Panel Discussions and Vote

Meeting Accessibility

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 Code of Federal Regulations (CFR) 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Written Statements: Pursuant to 41 CFR 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel about its mission and/or the agenda to be addressed in this public meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained previously in this announcement. Written comments or statements must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Panel for its consideration prior to the meeting. The DFO will review all submitted written statements and provide copies to all the committee members.

Dated: August 29, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–19109 Filed 8–31–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College; Notice of Federal Advisory Committee Meeting

AGENCY: Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College, Department of the Navy, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College will take place.

DATES: Open to the public October 17–18, 2018.

ADDRESSES: The meeting will be held at 3003 Washington Boulevard, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Jacquelyn (Jaye) Panza, 831–656–2514 (Voice), 831–656–2789 (Facsimile), *jpanza@nps.edu* (Email). Mailing address is Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001. Website: *https://my.nps.edu/web/board-of-advisors/home.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The Committee examines the effectiveness with which the Naval Postgraduate School and the Naval War College are accomplishing its missions.

Agenda: Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College Committee (the Committee) and its two subcommittees will be held. This meeting will be open to the public. For more information about the Committee, please visit *http://my.nps.edu/web/board-of-advisors.* 1. October 17, 2018, 9:00 a.m.–1:00 p.m.: The Naval Postgraduate School Board of Advisors subcommittee will meet to inquire into programs and curricula; instruction; administration; state of morale of the student body, faculty, and staff; fiscal affairs of Naval Postgraduate School and any other matters relating to the operations of the Naval Postgraduate School as the subcommittee considers pertinent. 2. October 17, 2018, 1:00 p.m.–5:00 p.m.: General deliberations and inquiry by the Naval War College Board of Advisors subcommittee into Naval War College programs and mission priorities; re-accreditation review; administration; military construction; leader development continuum; defense planning guidance efforts; and any other matters relating to the operations of the Naval War College as the subcommittee considers pertinent. 3. October 18, 2018, 8:30 a.m.–4:00 p.m.: The Naval Postgraduate School and Naval War College subcommittees will provide out briefs from their meetings to the Committee after which the Committee will discuss topics raised during the subcommittee sessions. The most up-to-date changes to the meeting agenda may be found on the website, *https://my.nps.edu/web/board-of-advisors/home.*

Meeting Accessibility: Meeting room is fully accessible to persons with disabilities in compliance with applicable disability rights laws.

Written Statements: For access or information, or to send written statements for consideration at the meeting, contact Ms. Jaye Panza, Designated Federal Official, Naval Postgraduate School, at 1 University Circle, Monterey, CA 93943–5001 or by fax at 831–656–3238 by October 8, 2018.

Dated: August 28, 2018.

James Edward Mosimann,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2018–19049 Filed 8–31–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0067]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; High School Equivalency Program (HEP) Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 4, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0067. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the

Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9088, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Lisa Gillette, 202–260–1426.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: High School Equivalency Program (HEP) Annual Performance Report.

OMB Control Number: 1810–0684.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 51.

Total Estimated Number of Annual Burden Hours: 1,173.

Abstract: The High School Equivalency Program (HEP) office staff collects information for the HEP Annual Performance Report (APR) in compliance with Higher Education Act of 1965, as amended, Title IV, Sec. 418A; 20 U.S.C. 1070d-2 (special programs for students whose families are engaged in migrant and seasonal farmwork), and the Code of Federal Regulations (CFR), 2 CFR 200.238. CFR states that recipients of multi-year discretionary grants must submit an APR demonstrating that that substantial progress has been made towards meeting the approved objectives. The HEP office staff requests to continue a customized APR that goes beyond the generic 524B APR to facilitate the collection of more standardized and comprehensive data to inform GPRA, to improve the overall quality of data collected, and to increase the quality of data that can be used to inform policy decisions.

Dated: August 29, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–19075 Filed 8–31–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Call for Written Third-Party Comments

AGENCY: U.S. Department of Education, Accreditation Group, Office of Postsecondary Education.

ACTION: Call for written third-party comments.

SUMMARY: This notice provides information to members of the public on submitting written comments for accrediting agencies currently undergoing review for purposes of recognition by the U.S. Secretary of Education.

FOR FURTHER INFORMATION CONTACT: Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Room 270–01, Washington, DC 20202, telephone: (202) 453–7615, or email: *herman.bounds@ed.gov.*

SUPPLEMENTARY INFORMATION: This solicitation of third-party comments concerning the performance of accrediting agencies under review by the Secretary of Education is required by § 496(n)(1)(A) of the Higher Education Act (HEA) of 1965, as amended. These accrediting agencies will be on the agenda for the Winter 2019 National Advisory Committee on Institutional Quality and Integrity meeting. The meeting date has not been determined, but will be announced in a separate **Federal Register** notice.

Agencies Under Review and Evaluation: Below is a list of agencies currently undergoing review and evaluation by the Accreditation Group, including their current and requested scopes of recognition:

Applications for Renewal of Recognition

1. Accrediting Council for Continuing Education and Training. Scope of Recognition: The accreditation throughout the United States of institutions of higher education that offer continuing education and vocational programs that confer certificates or occupational associate degrees, including those programs offered via distance education.

2. American Veterinary Medical Association, Council on Education. Scope of Recognition: The accreditation and preaccreditation (''Provisional Accreditation'') in the United States of programs leading to professional degrees (D.V.M. or D.M.D.) in veterinary medicine.

3. Council on Education for Public Health. Scope of Recognition: The accreditation within the United States of schools of public health and public health programs outside schools of public health, at the baccalaureate and graduate degree levels, including those offered via distance education.

4. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges. Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of community and other colleges with a primarily pre-baccalaureate mission located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, which offer certificates, associate degrees, and the first baccalaureate degree by means of a substantive change review offered by institutions that are already accredited by the agency, and such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes, and the Appeals Panel.

Compliance Report

1. The Council on Chiropractic Education compliance report includes the following: finding identified in the May 25, 2017 letter from the senior Department official following the February 22, 2017 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* with respect to recognition requirements found at 34 CFR 602.20(a). Scope of Recognition: The accreditation of

programs leading to the Doctor of Chiropractic degree and single-purpose institutions offering the Doctor of Chiropractic program.

2. Commission on English Language Program Accreditation Compliance report includes the following: Finding identified in the May 25, 2017 letter from the senior Department official following the February 22, 2017 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* with respect to recognition requirements found at 34 CFR 602.20(b). Scope of Recognition: The accreditation of postsecondary, non-degree-granting English language programs and institutions in the United States.

Application for an Expansion of Scope

1. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges. Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of community and other colleges with a primarily pre-baccalaureate mission located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, which offer certificates, associate degrees, and the first baccalaureate degree by means of a substantive change review offered by institutions that are already accredited by the agency, and such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes, and the Appeals Panel.

Requested Scope of Recognition

The accreditation and preaccreditation (''Candidate for Accreditation'') of community and other colleges in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Marianas, and the Republic of the Marshall Islands, which have as a primary mission the granting of associate degrees, but which may also award certificates and other credentials, including bachelor's degrees, where the provision of such credentials is within the institution's mission and, if applicable, is authorized by their governmental authorities, and the accreditation of such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes.

Submission of Written Comments Regarding a Specific Accrediting Agency or State Approval Agency Under Review

Written comments about the recognition of a specific accrediting or State agency must be received by September 30, 2018, in the *ThirdPartyComments@ed.gov* mailbox and include the subject line ''Written Comments: (Agency name).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Comments about an agency that has submitted a compliance report scheduled for review by the Department must relate to the criteria for recognition cited in the senior Department official's letter that requested the report, or in the Secretary's appeal decision, if any. Comments about an agency that has submitted a petition for renewal of recognition must relate to the agency's compliance with the Criteria for the Recognition of Accrediting Agencies, or the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education as appropriate, which are available at *http://www.ed.gov/admins/finaid/accred/index.html.*

Only written material submitted by the deadline to the email address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and NACIQI in their deliberations.

A later **Federal Register** notice will describe how to register to provide oral comments at the meeting regarding the recognition of a specific accrediting agency or State approval agency.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Planning, Policy, and Innovation.

[FR Doc. 2018–19003 Filed 8–31–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0068]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; The College Assistance Migrant Program (CAMP) Annual Performance Report (APR)

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 4, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0068. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9088, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Lisa Gillette, 202–260–1426.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: The College Assistance Migrant Program (CAMP) Annual Performance Report (APR).

OMB Control Number: 1810–0727.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 1,150.

Abstract: The College Assistance Migrant Program (CAMP) office staff collects information for the CAMP Annual Performance Report (APR) in compliance with Higher Education Act of 1965, as amended, Title IV, Sec. 418A; 20 U.S.C. 1070d–2 (special programs for students whose families are engaged in migrant and seasonal farm-work), and the Code of Federal Regulations (CFR), 2 CFR 200.238. CFR states that recipients of multi-year discretionary grants must submit an APR demonstrating that that substantial progress has been made towards meeting the approved objectives. The CAMP office staff requests to continue a customized APR that goes beyond the generic 524B APR to facilitate the collection of more standardized and comprehensive data to inform GPRA, to improve the overall quality of data collected, and to increase the quality of data that can be used to inform policy decisions.

Dated: August 29, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–19076 Filed 8–31–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0091]

Agency Information Collection Activities; Comment Request; Student Assistance General Provisions—Subpart K—Cash Management

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 5, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0091. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Subpart K—Cash Management.

OMB Control Number: 1845–0106.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 3,037,182.

Total Estimated Number of Annual Burden Hours: 916,358.

Abstract: The Department of Education (the Department) is requesting an extension of the information collection for the requirements that are contained in the regulations § 668.164—Disbursing funds. The regulations require that an institution that makes direct payments to a student or parent by electronic funds transfer (EFT) and that chooses to enter into an arrangement described in 668.164(e) or (f), including an institution that uses a third-party servicer to make those payments, must establish a selection process under which the student chooses one of several options for receiving those Title IV, HEA fund payments. The Department amended the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement the changes made

to the Student Assistance General Provisions regulations—Subpart K—Cash Management § 668.164—Disbursing funds. These regulations are intended to ensure students and parents have convenient access to their Title IV, HEA program funds, do not incur unreasonable and uncommon financial account fees on these title IV funds and are not led to believe that they must open a particular financial account to receive their Federal student aid.

Dated: August 29, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–19083 Filed 8–31–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10163–005]

L.P. Athol Corporation, MassGrow, LLC; Notice of Transfer of Exemption

1. By letter filed August 22, 2018, Vincent J. Purple, President, L.P. Athol Corporation, exemptee informed the Commission that the exemption from licensing for the Cresticon Project No. 10163, originally issued February 12, 1988 [1] has been transferred to MassGrow, LLC. The project is located on Millers River in Worcester County, Massachusetts. The transfer of an exemption does not require Commission approval.

2. MassGrow, LLC is now the exemptee of the Cresticon Project No. 10163. All correspondence should be forwarded to: Mr. Frank Perullo, COO, MassGrow, LLC, 137 Lewis Wharf, Boston, MA 02110, Phone: 617–721–5844, Email: *fp@novus-grp.com*

Dated: August 28, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–19087 Filed 8–31–18; 8:45 am]

BILLING CODE 6717–01–P

[1] Order Granting Exemption From Licensing (5 MW or Less). *Cresticon, Inc.,* 42 FERC ¶62,110 (1988).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2018–0629; FRL–9983–25–OW]

Proposed Information Collection Request; Comment Request; ''ICR Supporting Statement Information Collection Request for National Pollutant Discharge Elimination System (NPDES): Specific Provisions Affecting Applications and Program Updates Final Rule''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''ICR Supporting Statement Information Collection Request for National Pollutant Discharge Elimination System (NPDES): Specific Provisions Affecting Applications and Program Updates Final Rule'' (EPA ICR No. 2575.01, OMB Control No. 2040–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. 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 November 5, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2018–0629 online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: The EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The 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: Janita Aguirre, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1149; email address: *Aguirre.Janita@epa.gov;* or, Frank Sylvester, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–1279; email address: *Sylvester.Francis@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 the EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, the 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. The 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, the 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: On May 18, 2016, the EPA proposed the National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates rule (81 FR 31343). The Spring 2018 Regulatory Agenda explained that the EPA would be finalizing the proposed rule in two separate but related actions. This first final rule will address a subset of the revisions proposed in 2016 to modernize the NPDES regulations, clarify regulatory requirements, and promote submission of complete permit

applications. This ICR identifies the types of activities regulated and calculates the burden and associated costs of the revisions to be included in the first final rule, the National Pollutant Discharge Elimination System (NPDES): Specific Provisions Affecting Applications and Program Updates (RIN 2040–AF25), and corresponding updated NPDES permit application forms.

Form numbers: OMB. No. 2040–0004; OMB. No. 2040–0086; OMB. No. 2040–0188; OMB. No. 2040–0211; OMB. No. 2040–0250; OMB. No. 2040–0284; OMB. No. 1004–0189; OMB. No. 0596–0082.

Respondents/affected entities: The respondents affected by this collection activity include: The EPA; authorized state, territorial, and tribal programs; and the regulated community.

Respondent's obligation to respond: The collection is required pursuant to CWA section 402, as implemented by the revisions to 40 CFR parts 122, 124, and 125. Compliance with the updated application requirements and corresponding updated application forms is mandatory. The opportunity for NPDES permitting authorities to provide public notice of NPDES permit actions using the internet in lieu of the newspaper is voluntary.

Estimated number of respondents: 20,663 applicants/permittees; 20,019 state, territory, and tribal governments; 644 by the EPA (total: 41,326).

Frequency of response: The burden would be realized once within a five-year period, with the assumption that each permit would be reapplied for and renewed once every five years.

Total estimated burden: A reduction of 19,305 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: A savings of $2,524,064 (per year), includes a savings of $1,419,673 annualized capital or operation and maintenance costs.

Changes in estimates: There is an overall decrease of 19,305 hours in the total estimated respondent burden. This decrease is due to: Estimated burden reduction to both permittees and permitting authorities resulting from revised application forms that are easier to follow and redesigned to reduce confusion and support completion; permitting authorities exercising the option to publicly notice permitting decisions through public websites rather than through publication in newspapers, and; additional minor reductions in burden associated with permitting authority review of applications submitted by POTWs with pretreatment programs and applications submitted by permittees indicating the use of cooling water. These changes are due to changes in program requirements, as well as updated and improved NPDES permit application forms.

Dated: August 27, 2018.

Andrew D. Sawyers,

Director, Office of Wastewater Management.

[FR Doc. 2018–19142 Filed 8–31–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9983–28–OAR]

Request for Nominations for the 2019 Clean Air Excellence Awards Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations for Clean Air Excellence Awards.

SUMMARY: This notice announces the competition for the 2019 Clean Air Excellence Awards Program. EPA established the Clean Air Excellence Awards Program in February 2000 to recognize outstanding and innovative efforts that support progress in achieving clean air.

DATES: All submissions of entries for the Clean Air Excellence Awards Program must be postmarked by November 2, 2018.

FOR FURTHER INFORMATION CONTACT: Additional information on this awards program, including the entry form, can be found on EPA's Clean Air Act Advisory Committee (CAAAC) website: *http://epa.gov/air/cleanairawards/index.html.* Any member of the public who wants further information may contact Ms. Catrice Jefferson, Office of Air and Radiation, U.S. EPA by telephone at (202) 564–1668 or by email at *jefferson.catrice@epa.gov.*

SUPPLEMENTARY INFORMATION: Awards Project Notice, Pursuant to 42 U.S.C. 7403(a)(1) and (2) and sections 103(a)(1) and (2) of the Clean Air Act (CAA), notice is hereby given that the EPA's Office of Air and Radiation (OAR) announces the opening of competition for the 2019 Clean Air Excellence Awards Program (CAEAP). The intent of the program is to recognize and honor outstanding, innovative efforts that help to make progress in achieving cleaner air. The CAEAP is open to both public and private entities. Entries are limited to efforts related to air quality in the United States. There are five general award categories: (1) Clean Air Technology; (2) Community Action; (3) Education/Outreach; (4) State/Tribal/Local Air Quality Policy Innovations; and (5) Transportation Efficiency Innovations. There are also two special awards categories: (1) Thomas W. Zosel Outstanding Individual Achievement Award; and (2) Gregg Cooke Visionary Program Award. Awards are given periodically and are for recognition only.

Entry Requirements: All applicants are asked to submit their entry on a CAEAP entry form, contained in the CAEAP Entry Package, which may be obtained from the CAAAC website at *http://epa.gov/air/cleanairawards/entry.html.* Applicants can also contact Ms. Catrice Jefferson, Office of Air and Radiation, U.S. EPA by telephone at (202) 564–1668 or by email at *jefferson.catrice@epa.gov.* The entry form is a simple, four-part form asking for general information on the applicant; a narrative description of the project; three (3) independent references for the proposed entry; and your knowledge of EPA awards programs and resources. Applicants should also submit additional support documentation as necessary. Specific directions and information on filing an entry form are included in the Entry Package.

Judging and Award Criteria: EPA staff will use a screening process, with input from outside subject experts, as needed. Members of the CAAAC will provide advice to EPA on the entries. The EPA Assistant Administrator for Air and Radiation will make the final award decisions. Entries will be judged using both general criteria and criteria specific to each individual category. These criteria are listed in the 2019 Entry Package.

Dated: August 28, 2018.

Catrice Jefferson,

Office of Air and Radiation.

[FR Doc. 2018–19135 Filed 8–31–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2018–3754; FRL–9983–19—Region 4]

Alternate Energy Resources, Inc. Superfund Site; Augusta, Richmond County, Georgia; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has entered into a settlement with the Whitaker Oil Company concerning

the Alternate Energy Resources, Inc. Superfund Site located in Augusta, Richmond County, Georgia. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until October 4, 2018. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

Internet: https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.

- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW, Atlanta, Georgia 30303.
- *Email: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: June 20, 2018.

Maurice L. Horsey, IV,

Chief, Enforcement and Community Engagement Branch, Superfund Division.

[FR Doc. 2018–19130 Filed 8–31–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1121; FRL–9983–20–OAR]

Proposed Information Collection Request; Comment Request; Recordkeeping and Reporting Requirements for Diesel Fuels (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Recordkeeping and Reporting Requirements for Diesel Fuels'' (EPA ICR No 1718.11, OMB Control No. 2060–0308) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, 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 November 5, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–1121, 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.

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: James W. Caldwell, Compliance Division, Office of Transportation and Air Quality, 6405A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9303; fax number: 202–343–2802; email address: *caldwell.jim@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 *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: This ICR renewal is related to EPA's diesel fuel regulations under 40 CFR part 80, Subpart I, applicable to highway (motor vehicle) diesel fuel and non-road, locomotive and marine diesel fuel (NRLM), Emission Control Area (ECA) marine fuel, and heating oil. Most of the information collected under this ICR is used to evaluate compliance with the requirements of the regulations. Motor vehicle diesel fuel and just about all NRLM diesel fuel now meet a 15 part per million sulfur standard. The activities associated with this ICR include: registration (new refiners and importers, updates to existing registrations); submission of corrections to prior compliance reports; granting of research and development exemptions; generation and retention of quality assurance records; general recordkeeping; batch testing for sulfur content; and the production of product transfer documents and pump labels.

Form numbers: Only ECA0300 and DLQ001 are active. There may be resubmissions of the others.

DSF0100 Form: Diesel Fuel Sulfur Credit Banking and Generation Report—5900–334

DSF0200 Form: Diesel Fuel Sulfur Credit Transfer/conversion Report—5900–333

ECA0300 Form: ECA Marine Fuel Precision Demonstration—5900–352

DSF0302 Form: Diesel Fuel Sulfur Facility Summary Report—5900–323

DSF0401 Form: Diesel Fuel Sulfur Batch Report—5900–324

DSF0504 Form: Designated and Track Handoff Report—5900–325

DSF0601 Form: Designate and Track Total Volume Report—5900–326

DSF0700 Form: Designate Track Facility Compliance Calculation Report—5900–327

DSE0700 Form: Designate and Track Entity Compliance Calculation Report—5900–328

DSE0900 Form: Motor Vehicle Diesel Sulfur Pre-Compliance Report—5900–329

DSF0951 Form: NRLM Diesel Sulfur Pre-Compliance Report—5900–350

DLQ001 Form: (Used for lab test method)—EPA–420–B–14–066a

Respondents/affected entities: Parties involved with diesel fuels.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 7,900 (total).

Frequency of response: On occasion.

Total estimated burden: 28,450 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,300,200 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is an increase of 17,372 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to burdens that were not addressed in the current ICR, such as product transfer documents, the testing of each batch of diesel fuel for sulfur content, and labels on pumps that dispense hearing oil and certain offroad diesel fuels.

Dated: August 23, 2018.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2018–19154 Filed 8–31–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0091; FRL–9983–30–OAR]

Proposed Information Collection Request; Comment Request; Ambient Air Quality Surveillance (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Ambient Air Quality Surveillance'' (EPA ICR No. 0940.28, OMB Control No. 2060–0084), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, the 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 November 5, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2002–0091, 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.

The 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: Laurie Trinca, Air Quality Assessment Division, Office of Air Quality Planning and Standards, C304–06, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–0520; fax number: 919–541–1903: email address: *trinca.laurie@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 *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, the 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). The 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, the 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: This ICR includes ambient air monitoring data and other supporting measurements reporting and recordkeeping activities associated with the 40 CFR 58, Ambient Air Quality Surveillance rule. These data and information are collected by various state and local air quality management agencies and reported to the EPA's Office of Air Quality Planning and Standards within the Office of Air and Radiation.

This ICR reflects revisions of the previous ICR update of 2013, and covers the period of 2019–2021. The number of monitoring stations, sampling parameters, and frequency of data collection and submittal is expected to remain relatively stable for 2019–2021, with minor increases and decreases expected for several ambient air monitoring networks as air monitoring agencies review their monitoring networks.

The data collected through this information collection consist of ambient air concentration measurements for the seven air pollutants with national ambient air quality standards (*i.e.,* ozone, sulfur dioxide, nitrogen dioxide, lead, carbon monoxide, $PM_{2.5}$ and PM_{10}), ozone precursors, meteorological variables at a select number of sites and other supporting measurements. Accompanying the pollutant concentration data are quality assurance/quality control data and air monitoring network design information.

The EPA and others (*e.g.,* state and local air quality management agencies, tribal entities, environmental groups, academic institutions, industrial groups) use the ambient air quality data for many purposes. Some of the more prominent uses include informing the public and other interested parties of an area's air quality, judging an area's (*e.g.,* county, city, neighborhood) air quality in comparison with the established health or welfare standards (including both national and local standards), evaluating an air quality management agency's progress in achieving or maintaining air pollutant levels below the national and local standards,

developing and revising State Implementation Plans (SIPs) in accordance with 40 CFR 51, evaluating air pollutant control strategies, developing or revising national control policies, providing data for air quality model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, air quality trends assessment, and air pollution research.

The state and local agencies and tribal entities with responsibility for reporting ambient air quality data and information as requested in this ICR submit these data electronically to the EPA's Air Quality System (AQS) database. Quality assurance/quality control records and monitoring network documentation are also maintained by each state and local agency, in AQS electronic format where possible.

Although the state and local air pollution control agencies and tribal entities are responsible for the operation of the air monitoring networks, the EPA funds a portion of the total costs through federal grants. These grants generally require an appropriate level of contribution, or ''match,'' from the state/local agencies or tribal entities. The costs shown in this renewal are the total costs incurred for the monitoring program regardless of the source of the funding. This practice of using the total cost is consistent with prior ICR submittals and renewals.

Form numbers: None.

Respondents/affected entities: State, local and Tribal Air Pollution Control Agencies.

Respondent's obligation to respond: Mandatory per 40 CFR 58.

Estimated number of respondents: 168 (total).

Frequency of response: Quarterly.

Total estimated burden: 1,756,355 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $212,581,038 (per year), includes $15,066,248 annualized capital or operation & maintenance costs.

Changes in estimates: There is a decrease of 33,666 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a change in program requirements as well as adjustments to the estimates (*e.g.,* to account for inflation, network growth/shrinkage, etc.).

Dated: August 23, 2018.

Richard A. Wayland,

Director, Air Quality Assessment Division.

[FR Doc. 2018–19158 Filed 8–31–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2018–0618; FRL–9983–27–OW]

Public Meeting on EPA's Study of Oil and Gas Extraction Wastewater Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will host a public meeting to obtain input on its Study of Oil and Gas Extraction Wastewater Management. In May 2018, EPA initiated a study to evaluate approaches to managing both conventional and unconventional oil and gas extraction wastewaters generated at onshore facilities. EPA's study will address questions such as how existing federal approaches to produced water management under the Clean Water Act can interact more effectively with state and tribal regulations, what requirements or policy updates are needed, and whether support exists for potential federal regulations that may allow for broader discharge of treated produced water to surface waters. A key component of the study is to engage with stakeholders to solicit information from their individual perspectives on topics surrounding produced water management. This spring and summer, EPA met with various stakeholders across the country. This public meeting is the next step in EPA's outreach. During this meeting, EPA will report on what it has learned to date and provide stakeholders the opportunity to provide additional input. For more information on the meeting and the study, see the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The public meeting will be held on October 9, 2018, from 10:30 a.m. to 4 p.m., Eastern Time. The meeting will begin with EPA's status report on the study. This will be followed by a panel discussion on the work happening across the federal family to coordinate federal resources and reduce duplication on cross-cutting water issues. The public input session will begin at 12:30 p.m.

ADDRESSES: The meeting will be held at William J. Clinton Building—East, Room 1153, 1201 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jan Matuszko, Engineering and Analysis Division, Office of Water, email *matuszko.jan@epa.gov*.

SUPPLEMENTARY INFORMATION: For more information about the study, see EPA's website at *https://www.epa.gov/eg/study-oil-and-gas-extraction-wastewater-management*.

Participating in the meeting: The public is invited to speak during the October 9 public meeting. Those wishing to attend and/or speak can register at *oil-and-gas-study@epa.gov*. Please provide your name, organization, email address and indicate whether you plan to speak. Each speaker will be limited to three minutes. Registration is recommended but not required for this meeting. For security reasons, we request that you bring photo identification with you to the meeting. Seating will be provided on a first-come, first-served basis. Please note that parking is very limited in downtown Washington, and use of public transit is recommended. The EPA Headquarters complex is located near the Federal Triangle Metro station. Upon exiting the Metro station, walk east to 12th Street. On 12th Street, walk south to Constitution Avenue. At the corner, turn right onto Constitution Avenue and proceed to the EPA East Building entrance.

If you are unable to attend, you can submit a written statement at: *http://www.regulations.gov:* Enter Docket ID No. EPA–HQ–OW–2018–0618. Follow the online instructions for submitting a written statement. Once submitted, written statements cannot be edited or withdrawn. EPA may publish any written statement received to its public docket.

Do not submit electronically any information you consider to be Confidential Business Information (CBI). For additional submission methods, information about CBI, and general guidance on effective written submissions, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

Dated: August 27, 2018.

Deborah G. Nagle,

Acting Director, Office of Science and Technology, Office of Water.

[FR Doc. 2018–19151 Filed 8–31–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, September 6, 2018 at 2:00 p.m.

PLACE: 1050 First Street NE, Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:
Compliance matters pursuant to 52 U.S.C. 30109
Matters concerning participation in civil actions or proceedings or arbitration
* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Deputy Secretary of the Commission.

[FR Doc. 2018–19230 Filed 8–30–18; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, September 6, 2018 at 3:00 p.m.

PLACE: 1050 First Street NE, Washington, DC (12th Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:
Correction and Approval of Minutes for August 2, 2018
Draft Advisory Opinion 2018–11: Microsoft Corporation
Notice of Availability for REG 2018–02 (Leadership PACs' Personal Use)
Implementation of OMB Circular A–123: Internal Control Program
Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dayna C. Brown, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2018–19229 Filed 8–30–18; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Medical Expenditure Panel Survey (MEPS) Household Component and the MEPS Medical Provider Component.''

This proposed information collection was previously published in the **Federal Register** on June 4, 2018 and allowed 60 days for public comment. AHRQ did not receive substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by October 4, 2018.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Expenditure Panel Survey (MEPS) Household Component (HC)

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public the comment on this proposed information collection. For over thirty years, results from the MEPS and its predecessor surveys (the 1977 National Medical Care Expenditure Survey, the 1980 National Medical Care Utilization and Expenditure Survey and the 1987 National Medical Expenditure Survey) have been used by OMB, DHHS, Congress and a wide number of health services researchers to analyze health care use, expenses and health policy.

Major changes continue to take place in the health care delivery system. The MEPS is needed to provide information about the current state of the health care system as well as to track changes over time. The MEPS permits annual estimates of use of health care and expenditures and sources of payment for that health care. It also permits tracking individual change in employment, income, health insurance and health status over two years. The use of the NHIS as a sampling frame expands the MEPS analytic capacity by providing another data point for comparisons over time.

Households selected for participation in the MEPS–HC are interviewed five times in person. These rounds of interviewing are spaced about 5 months apart. The interview will take place with a family respondent who will report for him/herself and for other family members.

The MEPS–HC has the following goal:

- To provide nationally representative estimates for the U.S. civilian noninstitutionalized population for:
  - Health care use, expenditures, sources of payment
  - health insurance coverage

Medical Expenditure Panel Survey (MEPS) Medical Provider Component (MPC)

The MEPS–MPC will contact medical providers (hospitals, physicians, home health agencies and institutions) identified by household respondents in the MEPS–HC as sources of medical care for the time period covered by the interview, and all pharmacies providing prescription drugs to household members during the covered time period. The MEPS–MPC is not designed to yield national estimates as a stand-alone survey. The sample is designed to target the types of individuals and providers for whom household reported expenditure data was expected to be insufficient. For example, Medicaid enrollees are targeted for inclusion in the MEPS–MPC because this group is expected to have limited information about payments for their medical care.

The MEPS–MPC collects event level data about medical care received by sampled persons during the relevant time period. The data collected from medical providers include:

- Dates on which medical encounters during the reference period occurred
- Data on the medical content of each encounter, including ICD–10 codes
- Data on the charges associated with each encounter, the sources paying for the medical care-including the patient/family, public sources, and private insurance, and amounts paid by each source

Data collected from pharmacies include:

- Date of prescription fill
- National drug code (NDC) or prescription name, strength and form
- Quantity
- Payments, by source

The MEPS–MPC has the following goal:

- To serve as an imputation source for and to supplement/replace household reported expenditure and source of payment information. This data will supplement, replace and verify information provided by household respondents about the charges,

payments, and sources of payment associated with specific health care encounters.

This study is being conducted by AHRQ through its contractors, Westat and RTI International, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the cost and use of health care services and with respect to health statistics and surveys. 42 U.S.C. 299a(a)(3) and (8); 42 U.S.C. 299b-2.

Method of Collection

To achieve the goals of the MEPS–HC the following data collections are implemented:

1. Household Component Core Instrument. The core instrument collects data about persons in sample households. Topical areas asked in each round of interviewing include priority condition enumeration, health status, health care utilization including prescribed medicines, expenses and payments, employment, and health insurance. Other topical areas that are asked only once a year include access to care, income, assets, satisfaction with providers, and children's health. While many of the questions are asked about the entire reporting unit (RU), which is typically a family, only one person normally provides this information. All sections of the current core instrument are available on the AHRQ website at *http://meps.ahrq.gov/mepsweb/survey_comp/survey_questionnaires.jsp.*

2. Adult Self-Administered Questionnaire. A brief self-administered questionnaire (SAQ) will be used to collect self-reported (rather than through household proxy) on health opinions and satisfaction with health care, and information on health status, preventive care and health care quality measures for adults 18 and. The satisfaction with health care items are a subset of items from the Consumer Assessment of Healthcare Providers and Systems (CAHPS®). The health status items are from the Veterans Rand 12 item health survey (VR–12), a generic instrument developed with the support of the Department of Veterans Affairs and the Centers for Medicare and Medicaid Services. Additionally, there are questions addressing adult preventive care for both males and females. This questionnaire is revised from the previous OMB clearance.

3. Veteran SAQ. MEPS includes a new self-administered questionnaire for spring of 2019 data collection targeting the veteran population. The questionnaire asks questions in the following domains of interest: If a veteran is eligible for VA health care; if a Veteran is enrolled in VA health care; coordination of care in and out of the VA health care system, services provided to Veterans in and out of the VA health care system, and VA eligibility priority groups, for Veterans enrolled in VA health care and for Veterans eligible for VA health care. To assist in the correct identification of priority groups, the questionnaire may also include items assessing the following: Presence of service-connected disability; service-connected disability rating; presence of presumptive-conditions; timing and era of active duty; and VA receipt of disability compensation benefits. AHRQ worked with the Veteran Health Administration to develop the questionnaire content.

4. Diabetes Care SAQ. A brief self-administered paper-and-pencil questionnaire on the quality of diabetes care is administered once a year (during rounds 3 and 5) to persons identified as having diabetes. Included are questions about the number of times the respondent reported having a hemoglobin A1c blood test, whether the respondent reported having his or her feet checked for sores or irritations, whether the respondent reported having an eye exam in which the pupils were dilated, the last time the respondent had his or her blood cholesterol checked and whether the diabetes has caused kidney or eye problems. Respondents are also asked if their diabetes is being treated with diet, oral medications or insulin. This questionnaire is unchanged from the previous OMB clearance.

5. Authorization forms for the MEPS–MPC Provider and Pharmacy Survey. As in previous panels of the MEPS, we will ask respondents for authorization to obtain supplemental information from their medical providers (hospitals, physicians, home health agencies and institutions) and pharmacies.

6. MEPS Validation Interview. Each interviewer is required to have at least 15 percent of his/her caseload validated to insure that the computer assisted personal interview (CAPI) questionnaire content was asked appropriately and procedures followed, for example the use of show cards. Validation flags are set programmatically for cases pre-selected by data processing staff before each round of interviewing. Home office and field management may also request that other cases be validated throughout the field period. When an interviewer fails a validation their work is subject to 100 percent validation. Additionally, any case completed in less than 30 minutes is validated. A validation abstract form containing selected data collected in the CAPI interview is generated and used by the validator to guide the validation interview.

To achieve the goal of the MEPS–MPC the following data collections are implemented:

1. MPC Contact Guide/Screening Call. An initial screening call is placed to determine the type of facility, whether the practice or facility is in scope for the MEPS–MPC, the appropriate MEPS–MPC respondent and some details about the organization and availability of medical records and billing at the practice/facility. All hospitals, physician offices, home health agencies, institutions and pharmacies are screened by telephone. A unique screening instrument is used for each of these seven provider types in the MEPS–MPC, except for the two home care provider types which use the same screening form.

2. Home Care Provider Questionnaire for Health Care Providers. This questionnaire is used to collect data from home health care agencies which provide medical care services to household respondents. Information collected includes type of personnel providing care, hours or visits provided per month, and the charges and payments for services received. Some HMOs may be included in this provider type.

3. Home Care Provider Questionnaire for Non-Health Care Providers. This questionnaire is used to collect information about services provided in the home by non-health care workers to household respondents because of a medical condition; for example, cleaning or yard work, transportation, shopping, or child care.

4. Medical Event Questionnaire for Office-Based Providers. This questionnaire is for office-based physicians, including doctors of medicine (MDs) and osteopathy (DOs), as well as providers practicing under the direction or supervision of an MD or DO (*e.g.,* physician assistants and nurse practitioners working in clinics). Providers of care in private offices as well as staff model HMOs are included.

5. Medical Event Questionnaire for Separately Billing Doctors. This questionnaire collects information from physicians identified by hospitals (during the Hospital Event data collection) as providing care to sampled persons during the course of inpatient, outpatient department or emergency room care, but who bill separately from the hospital.

6. Hospital Event Questionnaire. This questionnaire is used to collect information about hospital events, including inpatient stays, outpatient

department, and emergency room visits. Hospital data are collected not only from the billing department, but from medical records and administrative records departments as well. Medical records departments are contacted to determine the names of all the doctors who treated the patient during a stay or visit. In many cases, the hospital administrative office also has to be contacted to determine whether the doctors identified by medical records billed separately from the hospital; doctors that do bill separately from the hospital will be contacted as part of the Medical Event Questionnaire for Separately Billing Doctors. HMOs are included in this provider type.

7. Institutions Event Questionnaire. This questionnaire is used to collect information about institution events, including nursing homes, rehabilitation facilities and skilled nursing facilities. Institution data are collected not only from the billing department, but from medical records and administrative records departments as well. Medical records departments are contacted to determine the names of all the doctors who treated the patient during a stay. In many cases, the institution's administrative office also has to be contacted to determine whether the doctors identified by medical records billed separately from the institution itself. Some HMOs may be included in this provider type.

8. Pharmacy Data Collection Questionnaire. This questionnaire requests the NDC and when that is not available the prescription name, strength and form as well as the date prescription was filled, payments by source, the quantity, and person for whom the prescription was filled. When the NDC is available, we do not ask for prescription name, strength or form because that information is embedded in the NDC; this reduces burden on the respondent. Most pharmacies have the requested information available in electronic format and respond by providing a computer generated printout of the patient's prescription information. If the computerized form is unavailable, the pharmacy can report their data to a telephone interviewer. Pharmacies are also able to provide a CD–ROM with the requested information if that is preferred. HMOs are included in this provider type.

Dentists, optometrists, psychologists, podiatrists, chiropractors, and others not providing care under the supervision of a MD or DO are considered out of scope for the MEPS–MPC.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the MEPS–HC and the MEPS–MPC.

The MEPS–HC Core Interview will be completed by 13,338* (see note below Exhibit 1) ''family level'' respondents, also referred to as RU respondents. Since the MEPS–HC consists of 5 rounds of interviewing covering a full two years of data, the annual average number of responses per respondent is 2.5 responses per year. The MEPS–HC core requires an average response time of 92 minutes to administer. The Adult Female SAQ will be completed once a year by each female person in the RU that is 18 years old and older, an estimated 12,984 persons. The Adult Male SAQ will be completed once a year by each male person in the RU that is 18 years old and older, an estimated 11,985 persons. The Adult SAQs each require an average of 7 minutes to complete. The Diabetes care SAQ will be completed once a year by each person in the RU identified as having diabetes, an estimated 2,072 persons, and takes about 3 minutes to complete. The Veteran SAQ will be completed once by each in-scope person who is a veteran of the U.S. military identified in the Round 1, Panel 23 interview, an estimated 1,350 persons. The Veteran SAQ requires an average of 15 minutes to complete. The authorization form for the MEPS–MPC Provider Survey will be completed once for each medical provider seen by any RU member. The 12,804 RUs in the MEPS–HC will complete an average of 5.4 forms, which require about 3 minutes each to complete. The authorization form for the MEPS–MPC Pharmacy Survey will be completed once for each pharmacy for any RU member who has obtained a prescription medication. RUs will complete an average of 3.1 forms, which take about 3 minutes to complete. About one third of all interviewed RUs will complete a validation interview as part of the MEPS–HC quality control, which takes an average of 5 minutes to complete. The total annual burden hours for the MEPS–HC are estimated to be 60,278 hours.

All medical providers and pharmacies included in the MEPS–MPC will receive a screening call and the MEPS–MPC uses 7 different questionnaires; 6 for medical providers and 1 for pharmacies. Each questionnaire is relatively short and requires 2 to 19 minutes to complete. The total annual burden hours for the MEPS–MPC are estimated to be 17,388 hours. The total annual burden for the MEPS–HC and MPC is estimated to be 77,666 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
MEPS–HC				
MEPS–HC Core Interview	*13,338	2.5	92/60	51,129
Adult Female SAQ	12,984	1	7/60	1,515
Adult Male SAQ	11,985	1	7/60	1,398
Diabetes care SAQ	2,072	1	3/60	104
Veteran SAQ	1,350	1	15/60	338
Authorization form for the MEPS–MPC Provider Survey	12,804	5.4	3/60	3,457
Authorization form for the MEPS–MPC Pharmacy Survey	12,804	3.1	3/60	1,985
MEPS–HC Validation Interview	4,225	1	5/60	352
Subtotal for the MEPS–HC	71,562	na	na	60,278
MEPS–MPC				
MPC Contact Guide/Screening Call**	36,598	1	2/60	1,220
Home care for health care providers questionnaire	635	1.53	9/60	146
Home care for non-health care providers questionnaire	11	1	11/60	2
Office-based providers questionnaire	11,210	1.65	10/60	3,083

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Separately billing doctors questionnaire	12,397	3.46	13/60	9,294
Hospitals questionnaire	5,310	3.26	9/60	2,597
Institutions (non-hospital) questionnaire	116	2.05	9/60	36
Pharmacies questionnaire	6,919	2.92	3/60	1,010
Subtotal for the MEPS–MPC	73,196	na	na	17,388
Grand Total	144,758	na	na	77,666

* While the expected number of responding units for the annual estimates is 12,804, it is necessary to adjust for survey attrition of initial respondents by a factor of 0.96 (13,338 = 12,804/0.96).
** There are 6 different contact guides; one for office based, separately billing doctor, hospital, institution, and pharmacy provider types, and the two home care provider types use the same contact guide.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this information collection. The annual cost burden for the MEPS–HC is estimated to be $1,467,167; the annual cost burden for the MEPS–MPC is estimated to be $298,580. The total annual cost burden for the MEPS–HC and MPC is estimated to be $1,765,746.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
MEPS–HC				
MEPS–HC Core Interview	13,338	51,129	*$24.34	$1,244,480
Adult Female SAQ	12,984	1,515	*24.34	36,875
Adult Male SAQ	11,985	1,398	*24.34	34,027
Diabetes care SAQ	2,072	104	*24.34	2,531
Veteran SAQ	1,350	338	*24.34	8,227
Authorization forms for the MEPS–MPC Provider Survey	12,804	3,457	*24.34	84,143
Authorization form for the MEPS–MPC Pharmacy Survey	12,804	1,985	*24.34	48,315
MEPS–HC Validation Interview	4,225	352	*24.34	8,568
Subtotal for the MEPS–HC	71,562	60,278	na	1,467,167
MEPS–MPC				
MPC Contact Guide/Screening Call	36,598	1,220	**17.25	21,045
Home care for health care providers questionnaire	635	146	**17.25	2,519
Home care for non-health care providers questionnaire	11	2	**17.25	35
Office-based providers questionnaire	11,210	3,083	**17.25	53,182
Separately billing doctors questionnaire	12,397	9,294	**17.25	160,322
Hospitals questionnaire	5,310	2,597	**17.25	44,798
Institutions (non-hospital) questionnaire	116	36	**17.25	621
Pharmacies questionnaire	6,919	1,010	***15.90	16,059
Subtotal for the MEPS–MPC	73,196	17,388	na	298,580
Grand Total	144,758	77,666	na	1,765,746

* Mean hourly wage for All Occupations (00–0000).
** Mean hourly wage for Medical Secretaries (43–6013).
*** Mean hourly wage for Pharmacy Technicians (29–2052).
Occupational Employment Statistics, May 2017 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. *https://www.bls.gov/oes/current/oes_nat.htm#b29-0000*.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All

comments will become a matter of public record.

Francis D. Chesley, Jr.,

Acting Deputy Director.

[FR Doc. 2018–19027 Filed 8–31–18; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Nursing Home Survey on Patient Safety Culture Database.''

This proposed information collection was previously published in the **Federal Register** on May 31, 2018, and allowed 60 days for public comment. AHRQ received no substantive comments during this period. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by October 4, 2018.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Nursing Home Survey on Patient Safety Culture Database

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public the comment on this proposed information collection. In 1999, the Institute of Medicine called for health care organizations to develop a ''culture of safety'' such that their workforce and processes focus on improving the reliability and safety of care for patients (IOM, 1999; *To Err is Human: Building a Safer Health System*). To respond to the need for tools to assess patient safety culture in health care, AHRQ developed and pilot tested the Nursing Home Survey on Patient Safety Culture with OMB approval (OMB NO. 0935–0132; Approved July 5, 2007).

The survey is designed to enable nursing homes to assess provider and staff perspectives about patient safety issues, medical error, and error reporting and includes 42 items that measure 12 composites of patient safety culture. AHRQ made the survey publicly available along with a Survey User's Guide and other toolkit materials in November 2008 on the AHRQ website.

The AHRQ Nursing Home SOPS Database consists of data from the AHRQ Nursing Home Survey on Patient Safety Culture. Nursing homes in the U.S. can voluntarily submit data from the survey to AHRQ through its contractor, Westat. The Nursing Home SOPS Database (OMB NO. 0935–0195, last approved on September 30, 2015) was developed by AHRQ in 2011 in response to requests from nursing homes interested in viewing their organizations' patient safety culture survey results. Those organizations submitting data receive a feedback report, as well as a report on the aggregated de-identified findings of the other nursing homes submitting data. These reports are used to assist nursing home staff in their efforts to improve patient safety culture in their organizations.

Rationale for the information collection. The Nursing Home SOPS and Nursing Home SOPS Database support AHRQ's goals of promoting improvements in the quality and safety of health care in nursing home settings. The survey, toolkit materials, and database results are all made publicly available on AHRQ's website. Technical assistance is provided by AHRQ through its contractor at no charge to nursing homes, to facilitate the use of these materials for nursing home patient safety and quality improvement.

This database will:

(1) Present results from nursing homes that voluntarily submit their data,

(2) Provide data to nursing homes to facilitate internal assessment and learning in the patient safety improvement process, and

(3) Provide supplemental information to help nursing homes identify their strengths and areas with potential for improvement in patient safety culture.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C 299a(a)(1) and (2)

Method of Collection

To achieve the goal of this project the following activities and data collections will be implemented:

(1) Eligibility and Registration Form—The nursing home (or parent organization) point-of-contact (POC) completes a number of data submission steps and forms, beginning with the completion of an online Eligibility and Registration Form. The purpose of this form is to collect basic demographic information about the nursing home and initiate the registration process.

(2) Data Use Agreement—The purpose of the data use agreement, completed by the nursing home POC, is to state how data submitted by nursing homes will be used and provides privacy assurances.

(3) Nursing Home Site Information Form—The purpose of the site information form, completed by the nursing home POC, is to collect background characteristics of the nursing home. This information will be used to analyze data collected with the Nursing Home SOPS survey.

(4) Data File(s) Submission—POCs upload their data file(s) using the data file specifications, to ensure that users submit standardized and consistent data in the way variables are named, coded and formatted. The number of submissions to the database is likely to vary each year because nursing homes do not administer the survey and submit data every year. Data submission is typically handled by one POC who is either a corporate level health care manager for a Quality Improvement Organization (QIO), a survey vendor who contracts with a nursing home to collect their data, or a nursing home Director of Nursing or nurse manager. POCs submit data on behalf of 5 nursing homes, on average, because many nursing homes are part of a QIO or larger nursing home or health system that includes many nursing home sites, or the POC is a vendor that is submitting data for multiple nursing homes.

Survey data from the AHRQ Nursing Home Survey on Patient Safety Culture are used to produce three types of products:

(1) A Nursing Home SOPS User Database Report that is made publicly available on the AHRQ website;

(2) Individual Nursing Home Survey Feedback Reports are individualized reports produced for each nursing home that submits data to the database; and

(3) Research data sets of individual-level and nursing home-level de-identified data to enable researchers to conduct analyses. All data released in a data set are de-identified at the individual-level and the nursing home-level.

Nursing homes will be invited to voluntarily submit their Nursing Home SOPS survey data to the database. The data are then cleaned and aggregated and used to produce a Database Report in PDF format that displays averages, standard deviations, and percentile scores on the survey's 42 items and 12 patient safety culture composites, as well as displaying these results by nursing home characteristics (bed size, urbanicity, ownership, and region) and respondent characteristics (work area/unit, staff position, interaction with residents, shift worked most often, and tenure in nursing home).

Each nursing home that submits data receives an individualized survey feedback report that presents their results alongside the aggregate results from other participating nursing homes.

Nursing homes use the Nursing Home SOPS Database Reports and Individual Nursing Home Survey Feedback Reports for a number of purposes, to:

- Raise staff awareness about patient safety.
- Elucidate and assess the current status of patient safety culture in their nursing home.
- Identify strengths and areas for patient safety culture improvement.
- Evaluate trends in patient safety culture change over time.
- Evaluate the cultural impact of patient safety initiatives and interventions.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the database. An estimated 60 POCs, each representing an average of 5 individual nursing homes, will complete the database submission steps and forms. Each POC will submit the following:

- Eligibility and registration form (completion is estimated to take about 3 minutes).
- Data Use Agreement (completion is estimated to take about 3 minutes).
- Nursing Home Site Information Form (completion is estimated to take about 5 minutes).
- Survey data submission will take an average of one hour.

The total annual burden hours are estimated to be 91 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be $4,085 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Eligibility/Registration Form	60	1	3/60	3
Data Use Agreement	60	1	3/60	3
Nursing Home Site Information Form	60	5	5/60	25
Data Files Submission	60	1	1	60
Total	NA	NA	NA	91

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents/ POCs	Total burden hours	Average hourly wage rate *	Total cost burden
Eligibility/Registration Forms	60	3	$44.89	$135
Data Use Agreement	60	3	44.89	135
Nursing Home Site Information Form	60	25	44.89	1,122
Data Files Submission	60	60	44.89	2,693
Total	240	91	NA	4,085

* The wage rate in Exhibit 2 is based on May 2017 National Industry-Specific Occupational Employment and Wage Estimates, Bureau of Labor Statistics, U.S. Dept. of Labor. Mean hourly wages for nursing home POCs are located at *https://www.bls.gov/oes/current/naics3_623000.htm*. The hourly wage of $44.89 is the weighted mean of $45.81 (General and Operations Managers 11–1021; N = 40) and $43.04 (Medical and Health Services Managers 11–9111; N = 20).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Francis D. Chesley, Jr.,

Acting Deputy Director.

[FR Doc. 2018–19026 Filed 8–31–18; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 13–129, NIOSH Member Conflict Special Emphasis Panel.

Date: October 25, 2018.

Time: 1:00 p.m.–5:00 p.m. EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Nina Turner, Ph.D., Scientific Review Officer, Office of Extramural Programs, 1095 Willowdale Road, Morgantown, WV 26506, (304) 285–5976; *nxt2@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–19077 Filed 8–31–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–3969]

Physiologically Based Pharmacokinetic Analyses—Format and Content; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Physiologically Based Pharmacokinetic Analyses—Format and Content.'' This guidance outlines the recommended format and content for a sponsor or applicant to submit physiologically based pharmacokinetic (PBPK) analyses to FDA to support applications including, but not limited to, investigational new drug applications (INDs), new drug applications (NDAs), biologics license applications (BLAs), or abbreviated new drug applications (ANDAs). This guidance does not address methodological considerations and best practices for the conduct of PBPK modeling and simulation or the appropriateness of PBPK analyses for a particular drug or a drug product.

DATES: The announcement of the guidance is published in the **Federal Register** on September 4, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2016–D–3969 for ''Physiologically Based Pharmacokinetic Analyses—Format and Content.'' 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 this 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 guidance document.

FOR FURTHER INFORMATION CONTACT: Xinyuan Zhang, Office of Clinical Pharmacology, Office of Translational Sciences, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2128, Silver Spring, MD 20993–0002, 240–402–7971.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Physiologically Based Pharmacokinetic Analyses—Format and Content.'' A PBPK analysis uses models and simulations that combine physiology, population, and drug characteristics to mechanistically describe the pharmacokinetic behaviors of a drug or drug product. Throughout a drug's life cycle, PBPK model predictions can be used to support decisions on whether, when, and how to conduct certain clinical pharmacology studies, and to support dosing recommendations in product labeling. Because of the lack of regulatory guidance, the format and content of PBPK analysis reports that are submitted to FDA vary significantly. The goal of this guidance is to standardize the content and format of these reports to facilitate FDA's efficient assessment, consistent application, and timely decision making during regulatory review.

This guidance outlines the recommended format and content for a sponsor or applicant to submit PBPK analyses to FDA to support applications including, but not limited to, INDs, NDAs, BLAs, and ANDAs. This guidance does not address methodological considerations and best practices for the conduct of PBPK modeling and simulation or the appropriateness of PBPK analyses for a particular drug or a drug product.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Physiologically Based Pharmacokinetic Analyses—Format and Content.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in 21 CFR 314.50(d) has been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: August 27, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19065 Filed 8–31–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1048]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 4, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0485. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Labeling Regulations—21 CFR Parts 800, 801, and 809

OMB Control Number 0910–0485—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device so that it is not misbranded and subject to a regulatory action. Certain provisions under section 502 of the FD&C Act require manufacturers, importers, and distributors of medical devices to disclose information about themselves or the devices on the labels or labeling for the devices.

Section 502(b) of the FD&C Act requires that for packaged devices, the label must bear the name and place of business of the manufacturer, packer, or distributor; and an accurate statement of the quantity of the contents. Section 502(f) of the FD&C Act requires that the labeling for a device must contain adequate directions for use. FDA may, however, grant an exemption if the Agency determines that the adequate directions for use labeling requirements are not necessary for the particular case as it relates to protection of the public health.

FDA regulations under parts 800, 801, and 809 (21 CFR parts 800, 801, and 809) require disclosure of specific

information by manufacturers, importers, and distributors of medical devices about themselves or the devices, on the label or labeling for the devices, to health professionals and consumers. Most of the regulations under parts 800, 801, and 809 are derived from requirements of section 502 of the FD&C Act. Section 502 provides, in part, that a device shall be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the device, is false or misleading in any particular way, or fails to contain adequate directions for use.

Recordkeeping Burden

Section 801.150(a)(2) establishes recordkeeping requirements for manufacturers of devices to retain a copy of the agreement containing the specifications for the processing, labeling, or repacking of the device for 2 years after the final shipment or delivery of the device. Section 801.150(a)(2) also requires that the subject respondents make copies of this agreement available for inspection at any reasonable hour to any officer or employee of the Department of Health and Human Services (HHS) who requests them.

Section 801.410(e) requires copies of invoices, shipping documents, and records of sale or distribution of all impact resistant lenses, including finished eyeglasses and sunglasses, be maintained for 3 years by the retailer and made available upon request by any officer or employee of FDA or by any other officer or employee acting on behalf of the Secretary of HHS.

Section 801.410(f) requires that the results of impact tests and description of the test method and apparatus be retained for a period of 3 years.

Section 801.421(d) establishes requirements for hearing aid dispensers to retain copies of all physician statements or any waivers of medical evaluation for 3 years after dispensing the hearing aid.

Section 801.430(f) requires manufacturers of menstrual tampons to devise and follow an ongoing sampling plan for measuring the absorbency of menstrual tampons. In addition, manufacturers must use the method and testing parameters described in § 801.430(f).

Section 801.435(g) requires latex condom manufacturers to document and provide, upon request, an appropriate justification for the application of the testing data from one product on any variation of that product to support expiration dating in the user labeling.

Third-Party Disclosure Burden

Sections 800.10(a)(3) and 800.12(c) require that the label for contact lens cleaning solutions bear a prominent statement alerting consumers of the tamper-resistant feature. Further, § 800.12 requires that packaged contact lens cleaning solutions contain a tamper-resistant feature to prevent malicious adulteration.

Section 800.10(b)(2) requires that the labeling for liquid ophthalmic preparations packed in multiple-dose containers provide information on the duration of use and the necessary warning information to afford adequate protection from contamination during use.

Section 801.1 requires that the label for a device in package form contain the name and place of business of the manufacturer, packer, or distributor.

Section 801.5 requires that labeling for a device include information on intended use as defined under § 801.4 and provide adequate directions to assure safe use by the lay consumers.

Section 801.61 requires that the principal display panel of an over-the-counter (OTC) device in package form must bear a statement of the identity of the device. The statement of identity of the device must include the common name of the device followed by an accurate statement of the principal intended actions of the device. Section 801.62 requires that the label for an OTC device in package form shall bear a declaration of the net quantity of contents. The label must express the net quantity in terms of weight, measure, numerical count, or a combination of numerical count and weight, measure, or size.

Section 801.109 establishes labeling requirements for prescription devices, in which the label for the device must describe the application or use of the device and contain a cautionary statement restricting the device for sale by, or on the order of, an appropriate professional.

Section 801.110 establishes labeling requirements for a prescription device delivered to the ultimate purchaser or user, by a licensed practitioner. The device must be accompanied by labeling bearing the name and address of the licensed practitioner, directions for use, and cautionary statements, if any, provided by the order.

Section 801.150(e) requires a written agreement between firms involved in the assembling or packaging of a nonsterile device containing labeling that identifies the final finished device as sterile and then shipping such device in interstate commerce prior to sterilization. In addition, § 801.150(e) requires that each pallet, carton, or other designated unit be conspicuously marked to show its nonsterile nature when introduced into interstate commerce and while being held prior to sterilization. When both requirements are met, FDA will take no regulatory action against the device as being misbranded or adulterated.

Section 801.405(b)(1) provides for labeling requirements for articles, including repair kits, re-liners, pads, and cushions, intended for use in temporary repairs and refitting of dentures for lay persons. Section 801.405(b)(1) also requires that the labeling contain the word ''emergency'' preceding and modifying each indication-for-use statement for denture repair kits, and the word ''temporary'' preceding and modifying each indication-for-use statement for re-liners, pads, and cushions.

Section 801.405(c) provides for labeling requirements that contain essentially the same information described under § 801.405(b)(1). The information is intended to enable a lay person to understand the limitations of using OTC denture repair kits and denture re-liners, pads, and cushions.

Section 801.420(c)(1) requires that manufacturers or distributors of hearing aids develop a user instructional brochure to be provided by the dispenser of the hearing aid to prospective users. The brochure must contain detailed information on the use and maintenance of the hearing aid.

Section 801.420(c)(4) establishes requirements that the user instructional brochure or separate labeling provide for technical data elements useful for selecting, fitting, and checking the performance of a hearing aid. In addition, § 801.420(c)(4) provides for testing requirements to determine that the required data elements must be conducted in accordance with the American National Standards Institute (ANSI) ''Specification of Hearing Aid Characteristics,'' ANSI S3.22–2003 (Revision of ANSI S3.22–1996), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 801.421(b) establishes requirements for the hearing aid dispenser to provide prospective users with a copy of the user instructional brochure along with an opportunity to review content, either orally or by the predominant method of communication used during the sale.

Section 801.421(c) establishes requirements for the hearing aid dispenser to provide a copy of the user instructional brochure to the

prospective purchaser of any hearing aid upon request, or, if the brochure is unavailable, provide the name and address of the manufacturer or distributor from which it may be obtained.

Section 801.430(d) establishes labeling requirements for menstrual tampons to provide information on signs, risk factors, and ways to reduce the risk of Toxic Shock Syndrome (TSS).

Section 801.430(e)(2) requires menstrual tampon package labels to provide information on the ranges of absorbency and absorbency term based on testing required under § 801.430(f) and an explanation of selecting absorbencies that reduce the risk of contracting TSS.

Section 801.435(b), (c), and (h) establishes requirements for condom labeling to bear an expiration date that is supported by testing that demonstrates the integrity of three random lots of the product.

Section 809.10(a) and (b) establishes requirements that a label for an in vitro diagnostic (IVD) device and the accompanying labeling (package insert) must contain information identifying its intended use, instructions for use, lot or control number, and source.

Section 809.10(d) provides that the labeling requirements for general purpose laboratory reagents may be exempt from the requirements of § 809.10(a) and (b) if the labeling contains information to include, identifying its intended use, instructions for use, lot or control number, and source.

Section 809.10(e) provides that the labeling for analyte specific reagents (ASRs) shall provide information to include, identifying the quantity, proportion, or concentration of each reagent ingredient, instructions for use, lot or control number, and source.

Section 809.10(f) provides that the labeling for OTC test sample collection systems for drugs of abuse shall include, among other things, information on the intended use, specimen collection instructions, identification system, and information about use of the test results.

Section 809.30(d) requires that advertising and promotional materials for ASRs include the identity and purity of the ASR and the identity of the analyte.

Section 1040.20(d) (21 CFR 1040.20) provides that manufacturers of sunlamp products and ultraviolet lamps are subject to the labeling regulations under part 801.

The burden estimates are based on FDA's current registration and listing data and shipment information.

In the **Federal Register** of February 22, 2018 (83 FR 7728), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment regarding environmental concerns. We believe this issue is beyond the scope of this information request.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Processing, labeling, or repacking agreement—801.150(a)(2).	6,331	887	5,615,597	.5 (30 minutes)	2,807,799
Impact resistant lenses; invoices, shipping documents, and records of sale or distribution—801.410(e) and (f).	1,119	47,050	52,648,950	0.0008 (.05 minutes)	42,119
Hearing aid records—801.421(d)	10,000	160	1,600,000	.25 (15 minutes)	400,000
Menstrual tampons, sampling plan for measuring absorbency—801.430(f).	16	11	176	80	14,080
Latex condoms; justification for the application of testing data to the variation of the tested product—801.435(g).	51	3.65	186	1	186
Total					3,264,184

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Contact lens cleaning solution labeling—800.10(a)(3) and 800.12(c).	25	8	200	1	200
Liquid ophthalmic preparation labeling—800.10(b)(2).	25	8	200	1	200
Manufacturer, packer, or distributor information—801.1.	18,137	7	126,959	1	126,959
Adequate directions for use—801.5	8,526	6	51,156	22.35	1,143,337
Statement of identify—801.61	8,526	6	51,156	1	51,156
Declaration of net quantity of contents—801.62	8,526	6	51,156	1	51,156
Prescription device labeling—801.109	9,681	6	58,086	17.77	1,032,188
Retail exemption for prescription devices—801.110.	30,000	667	20,010,000	.25 (15 minutes)	5,002,500
Processing, labeling, or repacking; non-sterile devices—801.150(e).	453	34	15,402	4	61,608

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Labeling of articles intended for lay use in the repairing and/or refitting of dentures—801.405(b)(1).	35	1	35	4	140
Dentures; information regarding temporary and emergency use—801.405(c).	35	1	35	4	140
Labeling requirements for hearing aids—801.420(c)(1).	124	12	1,488	40	59,520
Technical data for hearing aids—801.420(c)(4)	124	12	1,488	80	119,040
Hearing aids, opportunity to review User Instructional Brochure—801.421(b).	10,000	160	1,600,000	.30 (20 minutes)	480,000
Hearing aids, availability of User Instructional Brochure—801.421(c).	10,000	5	50,000	.17 (10 minutes)	8,500
User labeling for menstrual tampons—801.430(d)	16	8	128	2	256
Menstrual tampons, ranges of absorbency—801.430(e)(2).	16	8	128	2	256
User labeling for latex condoms—801.435(b), (c), and (h).	51	6	306	100	30,600
Labeling for IVDs—809.10(a) and (b)	1,700	6	10,200	80	816,000
Labeling for general purpose laboratory reagents—809.10(d)(1).	300	2	600	40	24,000
Labeling for ASRs—809.10(e)	300	25	7,500	1	7,500
Labeling for OTC test sample collection systems for drugs of abuse testing—809.10(f).	20	1	20	100	2,000
Advertising and promotional materials for ASRs—809.30(d).	300	25	7,500	1	7,500
Labeling of sunlamp products—1040.20(d)	19	1	19	10	190
Total					9,024,946

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of recordkeepers/respondents and records/disclosures has been adjusted to reflect updated Agency data. These adjustments result in an increase of 1,598,48 hours since the last OMB approval.

Dated: August 28, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19086 Filed 8–31–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3091]

Advisory Committee; Cardiovascular and Renal Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Cardiovascular and Renal Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Cardiovascular and Renal Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until August 27, 2020.

DATES: Authority for the Cardiovascular and Renal Drugs Advisory Committee will expire on August 27, 2020, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *CRDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Cardiovascular and Renal Drugs Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner.

The Cardiovascular and Renal Drugs Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders and makes appropriate recommendations to the Commissioner.

The committee shall consist of a core of 11 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of cardiology, hypertension, arrhythmia, angina, congestive heart failure, diuresis, and biostatistics. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the committee may include

one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/;Drugs/CardiovascularandRenalDrugsAdvisoryCommittee/ucm094743.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: August 28, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19067 Filed 8–31–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3123]

Advisory Committee; Endocrinologic and Metabolic Drugs Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Endocrinologic and Metabolic Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Endocrinologic and Metabolic Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until August 27, 2020.

DATES: Authority for the Endocrinologic and Metabolic Drugs Advisory Committee will expire on August 27, 2020, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *EMDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Endocrinologic and Metabolic Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner.

The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which the Food and Drug Administration has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders, and makes appropriate recommendations to the Commissioner.

The Committee shall consist of a core of 11 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of endocrinology, metabolism, epidemiology or statistics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/EndocrinologicandMetabolicDrugsAdvisoryCommittee/ucm100261.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: August 28, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19066 Filed 8–31–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3037]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Quantitative Testing for the Development of FDA Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the creation of a new collection of information entitled ''Generic Clearance for Quantitative Testing for the Development of FDA Communications.''

DATES: Submit either electronic or written comments on the collection of information by November 5, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 5, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 5, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the

instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–3037 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Quantitative Testing for the Development of FDA Communications.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• 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: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Generic Clearance for Quantitative Testing for the Development of FDA Communications

OMB Control Number 0910—New

This notice announces the FDA information collection request from OMB for a generic clearance that will allow FDA to use quantitative social/behavioral science data collection techniques (*i.e.,* surveys and experimental studies) to test consumers' reactions to FDA communications or educational messaging about FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed. To ensure that communications activities and educational campaigns have the highest potential to be received, understood, and accepted by those for whom they are intended, it is important to assess communications while they are under development. Understanding consumers' attitudes, motivations, and behaviors in response to potential communications and education messaging plays an important role in improving FDA's communications.

If the following conditions are not met, FDA will submit an information collection request to OMB for approval through the normal PRA process:

• The collections are voluntary;

• The collections are low burden for participants (based on considerations of total burden hours, total number of participants, or burden hours per participant) and are low cost for both the participants and the Federal Government;

• The collections are noncontroversial;

• Personally identifiable information (PII) is collected only to the extent necessary [1] and is not retained;

[1] For example, collections that collect PII to provide remuneration for participants of focus groups and cognitive laboratory studies will be submitted under this request. All Privacy Act requirements will be met.

- Information gathered will not be used for the purpose of substantially informing influential policy decisions; [2] and
- Information gathered will yield qualitative findings; the collections will not be designed or expected to yield statistical data or used as though the results are generalizable to the population of study.

To obtain approval for a collection that meets the conditions of this generic clearance, an abbreviated supporting statement will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the survey or experimental design and stimuli for testing).

FDA will submit individual quantitative collections under this generic clearance to OMB. Individual quantitative collections will also undergo review by FDA's Research Involving Human Subjects Committee, senior leadership in the Center for Food Safety and Applied Nutrition, and PRA specialists.

Respondents to this collection of information may include a wide range of consumers and other FDA stakeholders such as producers and manufacturers who are regulated under FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN BY ANTICIPATED DATA COLLECTION METHODS [1]

Survey type	Number of respondents	Number of responses per respondent	Total annual responses	Total hours
Cognitive Interviews Screener	720	1	720	60
Cognitive Interviews	144	1	144	144
Pre-test Study Screener	2,400	1	2,400	199
Pre-testing Study	480	1	480	120
Self-administered Surveys/Experimental Studies Screener	75,000	1	75,000	6,225
Self-Administered Surveys/Experimental Studies	15,000	1	15,000	3,750
Total				10,498

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The total estimated annual burden is 10,498 hours. Current estimates are based on both historical numbers of participants from past projects as well as estimates for projects to be conducted in the next 3 years. The number of participants to be included in each new survey will vary, depending on the nature of the compliance efforts and the target audience.

Dated: August 28, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19088 Filed 8–31–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2700]

Food for Human Consumption; Export Certificates; Food and Drug Administration Food Safety Modernization Act of 2011; Certification Fees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the fees we will assess for issuing export certificates for food for human consumption, with the exception of dietary supplements, medical foods, and foods for special dietary use. The FDA Food Safety Modernization Act (FSMA) of 2011 authorizes us to charge fees to cover our costs associated with issuing export certificates for food. This notice provides the fee schedule for issuing these certificates and the basis for the fees. We have not previously exercised our FSMA authority to collect fees for export certificates issued for food for human consumption.

DATES: The fees described in this document for export certificates for food for human consumption, with the exception of dietary supplements, medical foods, and foods for special dietary use, will be effective October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Kate Meck, International Affairs Staff, Center for Food Safety and Applied Nutrition (HFS–550), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2307, *CFSANExportCertification@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In April 1996, the ''FDA Export Reform and Enhancement Act of 1996'' (Pub. L. 104–134, amended by Pub. L. 104–180) amended sections 801 and 802 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 381 and 382). As a result of the 1996 amendments, section 801(e)(4) of the FD&C Act provides that persons exporting a drug, animal drug, or device may request FDA to certify that the product meets the requirements of section 801(e)(1), section 802, or other applicable requirements of the FD&C Act. Upon a showing that the product meets the applicable requirements, the law provides that FDA shall issue export certification within 20 days of the receipt of a request for such certification. The law also authorizes us to charge up to $175 for each certification issued within the 20-day period.

In January 2011, section 801(e)(4) of the FD&C Act was further amended by FSMA (Pub. L. 111–353) to authorize FDA to issue, and charge fees for, export certificates for food. Under section 801(e)(4)(C) of the FD&C Act, an export certification can be made in such form (including a publicly available listing) as FDA determines appropriate.

This notice focuses on the fees to be assessed with respect to export certificates issued by the Center for Food Safety and Applied Nutrition (CFSAN) for food for human

[2] As defined in OMB and agency Information Quality Guidelines, ''influential'' means that ''an agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.''

consumption, with the exception of dietary supplements, medical foods, and foods for special dietary use. This notice applies to foods such as produce, grains, processed foods, food additives, color additives, food contact substances, generally regarded as safe ingredients, infant formula, and all other foods not specifically excluded. Dietary supplements, medical foods, and foods for special dietary use are excluded from this notice.

II. Fees To Be Assessed for Export Certificates

CFSAN estimates the annual costs of the export certification program for food for human consumption, with the exception of dietary supplements, medical foods, and foods for special dietary use, to be approximately $975,000 per year for preparing and issuing export certificates. The costs are due to payroll and operating expenses. Specifically, there are four cost categories for preparing and issuing export certificates in general: (1) Direct personnel for research, review, tracking, writing, and assembly; (2) an information technology system used for tracking and processing certificates; (3) billing and collection of fees; and (4) overhead and administrative support. In fiscal year (FY) 2017 CFSAN issued approximately 4,072 export certificates for food for human consumption, with the exception of dietary supplements, medical foods, and foods for special dietary use. Because CFSAN has not been charging fees for issuing these export certificates, the program has been covered by appropriated funds.

As mentioned previously, FDA may charge up to $175 for each certificate. Certificates for some of the foods that are the subject of this notice cost us more than $175 to prepare. Subsequent certificates issued for the same product(s) in response to the same request generally cost FDA less than $175 to prepare. The fee for all subsequent certificates for the same product(s) issued in response to the same request reflects reduced FDA costs for preparing those certificates.

The following fees will be assessed starting October 1, 2018, for export certificates for food for human consumption, with the exception of dietary supplements, medical foods, and foods for special dietary use:

TABLE 1—CFSAN FEES FOR FIRST, SECOND, AND SUBSEQUENT EXPORT CERTIFICATES

Type of certificate	Fee (dollars)
First certificate	175
Second certificate for the same product(s) issued in response to the same request	155
Subsequent certificates for the same product(s) issued in response to the same request	100

The fee for issuing the first export certificate for food for human consumption, with the exception of dietary supplements, medical foods, and foods for special dietary use, will be at the maximum allowable amount and consistent with the export certification fees assessed since FY 1997 by other FDA Centers that provide export certification for drugs and devices. It is also consistent with the export certification fees assessed by the Center for Veterinary Medicine (CVM) for certificates for animal food, which CVM began assessing in FY 2016 because the FSMA amendments to section 801(e)(4) of the FD&C Act also apply to animal food. The fees for issuing subsequent certificates continue to differ among the Centers, based on varying costs.

Dated: August 28, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19064 Filed 8–31–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0014]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 4, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 4040–0014–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collections: Federal Financial Report (SF–425) and Federal Financial Report Attachment (SF–425A).

Type of Collection: Extension.

OMB No.: 4040–0014.

Abstract: Federal Financial Report (SF–425) and Federal Financial Report Attachment (SF–425A) are OMB-approved collections (4040–0014). These information collections are used by grant awardees. The ICs expire on January 31, 2019. We are requesting a three-year clearance of these collections.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Federal Financial Report (SF–425)	Grant Applicant	100,000	1	1	100,000
Federal Financial Report Attachment (SF–425A)	Grant Applicant	100,000	1	1	100,000
Total		200,000			200,000

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–19084 Filed 8–31–18; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–6: NCI Clinical and Translational R21 & Omnibus R03.

Date: October 4, 2018.

Time: 7:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Eduardo E. Chufan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Bethesda, MD 20892–9750, 240–276–7975, *chufanee@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–9: NCI Clinical and Translational R21 and Omnibus R03.

Date: October 23, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W114, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W114, Bethesda, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I—Transition to Independence.

Date: October 24–25, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Bethesda, MD 20892–9750, 240–276–6456, *tangd@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–8: NCI Clinical and Translational R21 and Omnibus R03.

Date: November 1–2, 2018.

Time: 6:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Reed A. Graves, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W106, Bethesda, MD 20892–9750, 240–276–6384, *gravesr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; HIV/AIDS and the Tumor Niche.

Date: November 13, 2018.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Bethesda, MD 20892–9750, 240–276–6611, *mukesh.kumar3@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 28, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–19051 Filed 8–31–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Charles LoDico, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N02C, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with

Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories).

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226.

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center—Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare,* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., a Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., a Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, testing for Veterans Affairs (VA) Employees Only.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, WA 98421, 800–442–0438.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, testing for Department of Defense (DoD) Employees Only.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles P. LoDico,

Chemist.

[FR Doc. 2018–19074 Filed 8–31–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning the Visionary Advanced 2 Dietary Supplement Tablets

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of three Visionary Advanced 2 vitamin and mineral dietary supplement tablets. Based upon the facts presented, for purposes of U.S. Government procurement, CBP has concluded that the United States is the country of origin of the Advanced 2 vitamin and mineral dietary supplement tablets.

DATES: The final determination was issued on August 27, 2018. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within October 4, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0132.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 27, 2018, pursuant to subpart B of part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of three versions of the Visionary Advanced 2 vitamin and mineral dietary supplement tablets which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H299717, copy attached, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title Ill of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The three products are Visionary Advanced 2 coated tablets, Visionary Orange Advanced 2 chewable tablets, and Visionary Cherry Advanced 2 chewable tablets. Each of the dietary supplement tablets contains the same basic formula of vitamins and minerals, but with different flavorings. In the final determination, CBP concluded that the combining of the various vitamins and minerals in one tablet in the United States results in a product that has a name, character and use that is distinct from the individual ingredients that are used to make the dietary supplement.

Therefore, for purposes of U.S. Government procurement, the United States is the country of origin. Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: August 27, 2018.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H299717

August 27, 2018

OT:RR:CTF:VS H299717 RSD

CATEGORY: Origin

Mr. Marino Apollinari
Visionary Vitamin Co.
P.O. Box 1825
Dearborn, Michigan 48122

RE: U.S. Government Procurement; Country of Origin of Advanced 2 Multiple Vitamin and Mineral Dietary Supplement Tablets; Substantial Transformation

Dear Mr. Apollinari:

This is in response to the Visionary Vitamin Company's (Visionary's) request of June 4, 2018, for a final determination concerning the country of origin of products known as the Visionary Advanced 2 dietary supplements pursuant to subpart B of Part 177 of the U.S. Customs and Border protection (''CBP'') Regulations (19 C.F.R. Part 177). The National Commodity Specialist Division forwarded your request to the Headquarters office of Regulations and Rulings to issue this final determination.

As an importer, Visionary is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Visionary is a manufacturer of dietary supplements. At issue are three different multiple vitamin and mineral dietary supplement tablets. The three dietary supplement tablets are the Advanced 2 Coated tablets, the Visionary Orange Advanced 2 chewable tablets, and the Visionary Cherry Advanced 2 chewable tablets.

The vitamin and mineral tablets contain the following raw materials:

	Country of origin
Medicinal Ingredients:	
Vitamin C DC grade (Ascorbic Acid) (97%)	China.
Vitamin E (As DL-Alpha Tocopherol Acetate) 50%-Tab grad	China.
Zinc (as oxide) (80.34%)	India.
Copper (as cupric oxide) (78.3%)	USA.
Lutein (5%) beadlets	China.
Zeaxanthin (5%) beadlets from Omnixan	USA.
Other ingredients:	
DI Calcium Phosphate	China.
Micro crystalline Cellulose	India.
Croscarmellose Sodium	Brazil.
Silicon Dioxide	USA.
Magnesium Stearate (vegetable source)	Spain.
Stearic Acid Vegetable grade	Malaysia.
Pharmaceutical Glaze (only used for coated tablets)	USA.

Instead of pharmaceutical glaze, the chewable orange and cherry tablets contain a natural masking flavor from the United States, either in a natural orange flavor or natural cherry flavor. In addition, the chewable cherry and orange tablets also incorporate sucralose from China. You have indicated that the most expensive single ingredient used in making the Advanced 2 dietary supplement tablets is the Zeaxanthin Omnixan from the United States.

The manufacturing processes of the three products occurs at Visionary's facility in Michigan, United States. The same basic procedures are used to manufacture the three different dietary supplement tablets. A flow chart of the processes was submitted. The active and inactive ingredients in powder form are weighed and all vital information is logged in.

Next, the ingredients are dispensed, and the dry mix is blended. A vibro sifter is used to pass the raw powder materials through a 40-mesh screen, while being added to a drum for mixing. Weight and yield are recorded. Mixing and lubrication is performed by a blender.

The approved blend is then transferred to the compression area. The blend is loaded into the hopper of a tablet press. The tablet press is set for the specified parameters and the details are noted in a start-up test during the tablet compression. The weight of the first few tablets is taken and checked against the actual weight of the product. Adjustments in the weight of the tablets are made until the right weight is obtained. The hardness of the tablets is also adjusted by carefully turning the pressure rollers by hand until the correct hardness is obtained. The tablets are then compared to previous samples. A series of in-process quality checks are performed in various intervals while the tablets are produced. These include: 1) appearance; 2) average weight per 10 tablets; 3) tablet thickness); 4) disintegration of tablet; 5) friability; 6) hardness; and 7) temperature and humidity.

The coating solution is prepared by loading the tablets in a pan and recording the actual weight. The tablets are pre-heated until the temperature reaches 100 degrees Fahrenheit. The coating solution is sprayed on the tablets until all surfaces of the tablets are covered. The tablets are unloaded into trays and placed in an oven room for drying. The tablets are then sorted and damaged tablets (such as broken, color or thickness variance, capping issues, or black/foreign material) are rejected.

Next, the product moves to the packaging line using the following equipment: an unscrambler, a conveyor, a tablet counter, a cottoner, a capper labeler, induction sealer, heat tunnel, printer coder, accumulation table and weighing balance. A system of quality controls occurs to ensure that the tablets are properly packaged, coded, and labeled.

ISSUE:

What is the country of origin of the Visionary Advanced 2 Coated tablets, Visionary Orange Advanced 2 Chewable tablets, and Visionary Cherry Advanced 2 Chewable tablets for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et* seq.) (''TAA'').

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(8):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See *also* 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with Federal Acquisition Regulations. See 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define ''U.S.-made end product'' as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 C.F.R. § 25.003.

A substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. See *United States* v. *Gibson-Thomsen* Co., 27 C.C.P.A. 267 (1940); and, *National Juice Products Association* v. *United* States, 628 F. Supp. 978 (Ct. lnt'I Trade 1986).

With respect to whether combining and mixing different materials results in a substantial transformation, CBP held in Headquarters Ruling Letter (''HQ'') 731685, dated March 15, 1990, that converting fruit concentrates and other ingredients into fruit drinks in Mexico constituted a substantial transformation. The manufacturing process involved mixing the juice concentrates with other ingredients including water, artificial flavor, sodium benzoate, and food coloring. CBP held that, considering the totality of the circumstances, a substantial transformation had occurred because ''[t]he juice concentrates are subsumed into a product that is no longer considered a juice.'' This situation is distinguished from a situation considered in *National Juice Products* Ass'n *v. United States,* 628 F. Supp. 978 (Ct. lnt'I Trade 1986), in which the United States Court of International Trade (''CIT'') upheld CBP's decision in HQ 728557, dated September 4, 1985, that imported orange juice concentrate was not substantially transformed when it was mixed with water, essential oils, flavoring ingredients and domestic fresh juice in order to produce frozen concentrated orange juice and reconstituted orange juice. CBP found that the manufacturing process did not create an article with a new name, character or use. The CIT agreed that the manufacturing process did not change the ''fundamental character of the product'' as ''it was still essentially the juice of oranges''. See HQ H237605 dated June 25, 2014. In HQ 731685, a substantial transformation was found because the raw ingredients had been converted into a different article of commerce through a process beyond simple combining, packaging or mere diluting.

In the context of the manufacture of chemical products such as pharmaceuticals, CBP has consistently examined the complexity of the processing and whether the final article retains the essential identity and character of the raw material. CBP has generally held that the processing of pharmaceutical products from bulk form into measured doses does not result in a substantial transformation. See, *e.g.,* HQ 561975, dated April 3, 2002; HQ 561544, dated May 1, 2000; HQ 735146, dated November 15, 1993; HQ H267177, dated November 5, 2016; HQ H233356, dated December 26, 2012; and, HQ 561975, dated April 3, 2002. However, where the processing from bulk form into measured doses involves the combination of two or more active ingredients and the resulting combination offers additional medicinal benefits compared to taking each alone, CBP has held that a substantial transformation occurs. See, *e.g.,* HQ 563207, dated June 1, 2005.

For example, in HQ 563207, CBP held that the combination of two APIs to form Actoplus Met, an alternative treatment for type 2 diabetes, constituted a substantial transformation. The first API, Pioglitazone HCI sourced from Japan or other countries, functioned as an insulin sensitizer that targets insulin resistance in the body. The second API, biguanide sourced from Japan, Spain, and other countries, functioned to decrease the amount of glucose produced by the liver and to make muscle tissue more sensitive to insulin so glucose can be absorbed. In Japan, the two APIs were mixed together to form the Ectoplasm Met. In holding that a substantial transformation occurred when the two API's were combined, CBP emphasized that ''[w]hile we note that pioglitazone and metformin may be prescribed separately, the final product, Actoplus Met, increases the individual effectiveness of piofliazone and metformin in treating type 2 diabetes patients.''

Similarly, in HQ H253443, dated March 13, 2015, CSP held that the combination of two APIs in China to produce Prepopik, ''a dual-acting osmotic and stimulant laxative bowel preparation for a colonoscopy in adults,'' constituted a substantial transformation. CBP found that taking Prepopik had ''a more stimulative laxative effect'' than taking each of the APIs individually. Further, in HQ H290684, dated July 2, 2018, CSP considered the country of origin of Malarone, a drug indicated for the prevention and treatment of acute, uncomplicated Plasmodium falciparum malaria. Two separate APIs were

mixed to create a fixed combination drug that offered additional medicinal benefits compared to taking each API alone. The first API, atovaquone, was not indicated for the prevention or treatment of malaria, the second API, proguanil hydrochloride, was used to treat malaria, but was less effective than Malarone. Because of the ''synergies in [the APIs'] method of action,'' which resulted in a product that ''interfere[s] with 2 different pathways'' to prevent and treat malaria, CBP held that the combination of atovaquone, proguanil hydrochloride, and inactive ingredients to form the Malarone tablets in Canada resulted in a substantial transformation.

In this case, to make the dietary supplement tablets, various ingredients from different countries of origin are mixed together based on a specific formula. This results in a finished product that differs from any of the individual ingredients. The vitamins and minerals are put together in one tablet for the purposes of creating a product that is designed to promote certain effects that are distinct from the effects if only the individual ingredients were taken. Similar to HQ H253443, the combination of the vitamins and minerals in a single tablet creates a product with a synergistic effect that promotes benefits that otherwise would only be possible by taking the individual ingredients separately. In other words, the combination of the various vitamins and minerals in one tablet results in a product that has an identity, character and use that is different from and more convenient to use than taking the individual raw materials. Accordingly, we find that the three Visionary dietary supplement tablets have a new name, character and use different from the individual vitamins, minerals, and the inert ingredients used in the production of the finished tablets. Therefore, we find that the country of origin of the Visionary Advanced 2 multiple vitamin and mineral dietary supplement tablets is the United States, where the manufacturing process take place.

HOLDING:

The country of origin of the Visionary Advanced 2 Coated Tablets, Visionary Orange Advanced 2 Chewable Tablets, and Visionary Cherry Advanced 2 Chewable Tablets for purpose of U.S. Government procurement is the United States.

Notice of this final determination will be given in the *Federal Register*, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the *Federal Register* Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel, Executive Director
Regulations & Rulings
Office of Trade

[FR Doc. 2018–19162 Filed 8–31–18; 8:45 am]

BILLING CODE P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: September 6, 2018, 11:00 a.m.–12:00 p.m.

PLACE: Via tele-conference hosted at Inter-American Foundation, 1331 Pennsylvania Ave. NW, Suite 1200, Washington, DC 20004.

STATUS: Meeting of the Board of Directors, Open to the public.

MATTERS TO BE CONSIDERED:

- Commemorating the IAF's 50th Anniversary

FOR DIAL-IN INFORMATION CONTACT: Karen Vargas, Executive Assistant, (202) 524–8869.

CONTACT PERSON FOR MORE INFORMATION: Paul Zimmerman, General Counsel, (202) 683–7118.

Paul Zimmerman,

General Counsel.

[FR Doc. 2018–19190 Filed 8–30–18; 11:15 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES930000.LLES1320000.EL0000]

Notice of Competitive Coal Lease Sale ALES–55199, Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the coal resources in the lands described below in Jefferson County, Alabama, will be re-offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The coal lease sale will be held at 1 p.m. Central Daylight Time (CDT) on a date to be determined by the BLM Eastern States Deputy State Director, no sooner than October 4, 2018. Sealed bids must be received on or before 10 a.m. CDT on the date of sale.

ADDRESSES: The date of the sale will be posted at *https://www.blm.gov/eastern-states.* The lease sale will be held at the Bureau of Land Management (BLM) Southeastern States District Office located at 273 Market Street, Flowood, MS 39232. The Detailed Statement of Lease Sale, the proposed coal lease, and Casefile ALES–55199 are available at this address. Sealed bids must be submitted to the Cashier, BLM Southeastern States District Office, at this same address.

FOR FURTHER INFORMATION CONTACT: Contact Randall Mills, BLM Mining Engineer, by telephone at 601–919–4668, by email to *ramills@blm.gov,* or at the address indicated above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Best Coal Company. The Federal coal reserves to be re-offered consist of all reserves recoverable by surface mining methods in the following described lands located approximately 5 miles north of Mt. Olive, Alabama, in Jefferson County, Alabama:

Huntsville Meridian, Alabama

T. 15 S, R. 4 W,
Sec. 24, SW¼NW¼, N½SW¼, and SE¼SW¼.

The areas described aggregate 160.82 acres.

The Narley Mine Coal Tract contains three minable coal beds known as the New Castle, Mary Lee, and Blue Creek seams of the Mary Lee coal group. The seams are under private surface lands. The minable thickness of these coal beds for this tract are approximately 4 to 5 feet. The tract contains approximately 469,000 tons of recoverable high-volatile bituminous coal. The estimated average coal quality on an ''as received basis'' is as follows:

12,500	British Thermal Unit (Btu/lb).
3.50	Percent moisture.*
12.00	Percent ash.
34	Percent volatile matter.
50.50	Percent fixed carbon.
1.50	Percent sulfur.

* Estimated as received moisture; also used for calculating as received from dry basis.

The tract will be leased to the qualified bidder of the highest cash amount, provided that the bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid established by regulation is $100 per acre or fraction thereof. The minimum bid is not intended to represent fair market value. The fair-market value will be determined by the authorized officer after the sale.

The sealed bids should be sent by certified mail, return-receipt requested, or be hand delivered to the cashier, BLM Southeastern States District Office, at the address given above and clearly marked ''Sealed Bid for ALES–55199 Coal Sale—Not to be opened before 1 p.m. CDT on (date of Sale), 2018.'' The

cashier will issue a receipt for each hand-delivered bid. Bids received after 10 a.m. on the date of the sale will not be considered. If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the sale official's announcement at the sale that identical high bids have been received. Prior to lease issuance, the high bidder, if other than the applicant, must pay to the BLM the cost-recovery fees in the amount of $30,630 in addition to all processing costs the BLM incurs after the date of this sale notice (43 CFR 3473.2).

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8 percent of the value of coal mined by underground methods. Bidding instructions for the tract offered, and the terms and conditions of the proposed coal lease, are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the BLM Southeastern States District Office. Casefile ALES–55199 is also available for public inspection at the BLM Southeastern States District Office.

Authority: 43 CFR 3422.3–2.

Mitchell Leverette,

Acting State Director.

[FR Doc. 2018–19124 Filed 8–31–18; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWRO–TUSK–26152; PPPWTUSK00, PPMPSPD1Z.YM0000]

Tule Springs Fossil Beds National Monument Advisory Council; Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service is hereby giving notice that the Tule Springs Fossil Beds National Monument Advisory Council (Council) will meet as indicated below.

DATES: The meeting will be held on Monday, October 15, 2018, at 5:00 p.m. (Pacific).

ADDRESSES: The meeting will be held at the Federal Interagency Office Building, 4701 N. Torrey Pines Road, Las Vegas, Nevada 89130–2301.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from Diane Keith, Superintendent, Tule Springs Fossil Beds National Monument, 601 Nevada Way, Boulder City, Nevada 89005, via telephone at (702) 515–5462, or email at *tusk_information@nps.gov*.

SUPPLEMENTARY INFORMATION: The Council was established pursuant to Section 3092(a)(6) of Public Law 113–291 and in accordance with the provisions of the Federal Advisory Management Act (5 U.S.C. Appendix 1–16). The purpose of the Council is to advise the Secretary of the Interior with respect to the preparation and implementation of the management plan.

Purpose of the Meeting: The Council will discuss the following:

1. Introduction of the DFO and Council Members
2. Committee Roll
3. Approval of Agenda
4. Review and Approval of Minutes
5. Reports
   a. Superintendent Report
   b. Old Business
   c. New Business
6. Public Comments
7. Adjourn

The meeting is open to the public. Interested persons may make oral/written presentations to the Council during the business meeting or file written statements. Such requests should be made to the Superintendent prior to the meeting.

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 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.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2018–19117 Filed 8–31–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CACO–26016; PPNECACOS0, PPMPSD1Z.YM0000]

Cape Cod National Seashore Advisory Commission Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice of the 308th meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The meeting will be held on Monday, September 24, 2018, at 1:00 p.m. (Eastern).

ADDRESSES: The meeting will be held in the conference room at park headquarters, 99 Marconi Site Road, Wellfleet, Massachusetts 02667.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from Brian Carlstrom, Superintendent and Designated Federal Officer, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, Massachusetts 02667, or at (508) 771–2144 or by email at *brian_carlstrom@nps.gov*.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126, as amended by Public Law 105–280 (16 U.S.C. 459b–7). The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

Purpose of the Meeting: The purpose of the meeting is to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
   (June 18, 2018)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   Certificates of Suspension from Condemnation (CSC), 8 expire in December 2018
   Shorebird Management Plan/Environmental Assessment—Update
   Seashore Projects
   Herring River Wetland Restoration
   Healthy Parks, Healthy People
6. Old Business
   Update on Horton's Campground
   Private Commercial Properties

Related to their CSCs
7. New Business
Action Item—Recommendations to Superintendent on CSCs
8. Public Comment
9. Adjournment

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting.

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 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.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2018–19118 Filed 8–31–18; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–929–931 (Third Review)]

Silicomanganese From India, Kazakhstan, and Venezuela; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted September 4, 2018. To be assured of consideration, the deadline for responses is October 4, 2018. Comments on the adequacy of responses may be filed with the Commission by November 19, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 23, 2002, the Department of Commerce issued antidumping duty orders on imports of silicomanganese from India, Kazakhstan, and Venezuela (67 FR 36149). Following the first five-year reviews by Commerce and the Commission, effective November 30, 2007, Commerce issued a continuation of the antidumping duty orders on imports of silicomanganese from India, Kazakhstan, and Venezuela (73 FR 841, January 4, 2008). Following the second five-year reviews by Commerce and the Commission, effective October 2, 2013, Commerce issued a continuation of the antidumping duty orders on imports of silicomanganese from India, Kazakhstan, and Venezuela (78 FR 60846). The Commission is now conducting third five-year reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews are India, Kazakhstan, and Venezuela.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its expedited first five-year review determinations, and its full second five-year review determinations, the Commission found a single *Domestic Like Product* consisting of all forms, sizes, and compositions of silicomanganese, except low-carbon silicomanganese, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its expedited first five-year review determinations, and its full second five-year review determinations, the Commission found a single *Domestic Industry* consisting of all domestic producers of silicomanganese, except low-carbon silicomanganese.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the

same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 4, 2018. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is November 19, 2018. 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://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 18–5–412, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject*

Country that currently export or have exported *Subject Merchandise* to the United States or other countries after 2012.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2017, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2012, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 27, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–18848 Filed 8–31–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–919 (Third Review)]

Certain Welded Large Diameter Line Pipe From Japan; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on certain welded large diameter line pipe from Japan would be likely to lead to continuation or

recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted September 4, 2018. To be assured of consideration, the deadline for responses is October 4, 2018. Comments on the adequacy of responses may be filed with the Commission by November 19, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 6, 2001, the Department of Commerce issued an antidumping duty order on imports of certain welded large diameter line pipe from Japan (66 FR 63368). Following the first five- year reviews by Commerce and the Commission, effective November 5, 2007, Commerce issued a continuation of the antidumping duty order on imports of certain welded large diameter line pipe from Japan (72 FR 62435). Following the second five-year reviews by Commerce and the Commission, effective October 29, 2013, Commerce issued a continuation of the antidumping duty order on imports of certain welded large diameter line pipe from Japan (78 FR 64477). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full first and second five-year review determinations, the Commission found a single *Domestic Like Product* consisting of certain welded large diameter line pipe, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full first and second five-year review determinations, the Commission found a single *Domestic Industry* consisting of all domestic producers of certain welded large diameter line pipe.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will

sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 4, 2018. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 19, 2018. 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 18–5–413, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2012.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2017, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on

an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2012, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 27, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–18861 Filed 8–31–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on August 14, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Skypine Electronics (Shenzhen) Co., Ltd., Shenzhen City, PEOPLE'S REPUBLIC OF CHINA, has been added as a party to this venture.

Also, Videon Central Inc., State College, PA; Foryou General Electronics, Huizhou, PEOPLE'S REPUBLIC OF CHINA; Taiwan Sanshin Electronics Co., Tokyo, JAPAN; Teltron Baires S.A., Buenos Aires, ARGENTINA; D&M Holdings, Kawasaki, JAPAN; Seiko Epson Corporation, Suwa, JAPAN; and FMS Co., Ltd., Gwangjeok-myeon, REPUBLIC OF KOREA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on May 16, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 7, 2018 (83 FR 26498).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–19070 Filed 8–31–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on August 10, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lifebit (Lifebit Biotech Limited), London, UNITED KINGDOM; Aigenpulse Ltd., London, UNITED KINGDOM; Fulcrum Direct Ltd., Cardiff, UNITED KINGDOM; Kalleid, Cambridge, MA; Riffyn, Inc., Oakland, CA; DeepMatter Limited, Glasgow, UNITED KINGDOM; Phesi LLC, East Lyme, CT; Cambridge Semantics, Boston, MA; and Devendra Deshmukh

(individual), Shrewsbury, MA, have been added as parties to this venture.

Also, Context Matters, Inc., New York, NY; Richard Hather (individual), Baldock, UNITED KINGDOM; Rachel Belani Baker (individual), New York, NY; Insightomics, Lisbon, PORTUGAL; and Pine Biotech, Inc., New Orleans, LA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on May 29, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 9, 2018 (83 FR 31774).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–19069 Filed 8–31–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on ROS-Indusrial Consortium-Americas

Notice is hereby given that, on August 17, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, National Oilwell Varco L.P., Houston, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and RIC-Americas intends to file additional written notifications disclosing all changes in membership or planned activities.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on July 11, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 6, 2018 (83 FR 38324).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–19071 Filed 8–31–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—3D PDF Consortium, Inc.

Notice is hereby given that, on August 15, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 3D PDF Consortium, Inc. (''3D PDF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kamel Shaath (individual), Ottawa, CANADA; Owen Ambur (individual), Hilton Head, SC; and Rick Laxman (individual), Salt Lake City, UT, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 3D PDF intends to file additional written notifications disclosing all changes in membership.

On March 27, 2012, 3D PDF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2012 (77 FR 23754).

The last notification was filed with the Department on May 22, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 19, 2018 (83 FR 28447).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–19073 Filed 8–31–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Countering Weapons of Mass Destuction

Notice is hereby given that, on August 6, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Countering Weapons of Mass Destruction (''CWMD'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accenture Federal Services, Arlington, VA; Altamira Technologies Corp., McClean, VA; AppliedInfo Partners, Inc., Somerset, NJ; ASELL, LLC, Owings Mills, MD; Ashwin-Ushas Corporation, Holmdel, NJ; Avarint, LLC, Buffalo, NY; BioFire Defense, LLC, Salt Lake City, UT; Blackthorne Services Group, Hanover, MA; Blauer Manufacturing, Co., Boston, MA; Clear Scientific, LLC, Cambridge, MA; Convergence LLC, Bel Air, MD; CUBRC INC., Buffalo, NY; Deloitte Consulting, LLP, Arlington, VA; DetectaChem, LLC, Stafford, TX; EcoHealth Alliance, New York, NY; FEDITC, LLC, Rockville, MD; Forge AI, Cambridge, MA; General Dynamics Information Technology, Inc. (GDIT), Fairfax, VA; GSINS–EES JV LLC, Flemmington, NJ; Hassett and Willis Associates (HWC, Inc.), Washington, DC; InnovaPrep, LLC, Drexel, MO; ISOVAC Products, LLC, Romeoville, IL; L2 Defense, Edgewood, MD; Life Safety Systems, Inc., Santa Cruz, CA; Maxim Biomedical, Inc., Rockville, MD; MLT Systems LLC, Stafford, VA; MRE Technology Solutions, LLC, Annapolis, MD; Nano Terra, Inc., Cambridge, MA; Nevada Nanotech Systems, Sparks, NV; Nokomis, Inc., Chrleroi, PA; North Carolina State University (NC State University), Raleigh, NC; PAE NSS, Fredericksburg, VA; Persistent Systems, LLC, New York, NY; QinetiQ North

America, Waltham, MA; QUASAR Federal Systems, San Diego, CA; Rapiscan Systems, Inc., Torrance, CA; Research Triangle Institute (RTI), Research Triangle Park, NC; RINI Technologies, Inc., Oviedo, FL; Saint-Gobain Performance Plastics, Solon, OH; Sensor Concepts & Applications, Inc., Glen Arm, MD; Summit Exercise and Training LLC, St. Petersburg, FL; TerraTracker, Inc., Livermore, CA; The University of Tennessee Knoxville, Knoxville, TN; Tier Tech International, Inc., McLean, VA; Veritech, LLC, Glendale, AZ; VITNI Corp., Hilo, HI; Xator Corporation, Reston, VA, have been added as parties to this venture.

Also, SigNet Technologies, Cary, NC, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CWMD intends to file additional written notifications disclosing all changes in membership.

On January 31, 2018, CWMD filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2018 (83 FR 10750).

The last notification was filed with the Department on April 25, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 30, 2018 (83 FR 24822).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–19072 Filed 8–31–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Dion Cumbie,* Case No. 2:18-cv-02366–DCN, was lodged with the United States District Court for the District of South Carolina, Charleston Division, on August 27, 2018.

This proposed Consent Decree concerns a complaint filed by the United States against Dion Cumbie, pursuant to Sections 301(a), 309(b), and 309(d) of the Clean Water Act, 33 U.S.C. 1311(a), 1319(b), and 1319(d), to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas and/or perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Martin McDermott, Senior Attorney, United States Department of Justice, Environment and Natural Resources Division, Post Office Box 7611, Washington, DC 20044–7611 and refer to *United States* v. *Dion Cumbie,* Case No. 2:18-cv-02366–DCN, DJ # 90–5–1–1–18616.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina, Charleston Division, 85 Broad Street, Charleston, SC 29401. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees*.

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2018–19110 Filed 8–31–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act of 1974 Technical Release 1991–1

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Employee Retirement Income Security Act of 1974 Technical Release 1991–1,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 4, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201805-1210-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Employee Retirement Income Security Act of 1974 (ERISA) Technical Release 1991–1 information collection. The subject information collection requirements arise from ERISA section 101(e), which establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under conditions set forth in Internal Revenue Code of 1986 as amended section 420. *See* 29 U.S.C. 1021(e); 26 U.S.C. 420. ERISA section 101(e) notice requirements are two-fold. First, subsection (e)(1) requires a plan administrator to provide advance written notification of any such transfer to participants and beneficiaries. Second, subsection (e)(2)(A) requires an employer to provide advance written notification of any such transfer to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least sixty (60) days before the transfer date. The two subsections prescribe the information to

be included in each type of notice and further authorize the Secretary of Labor to prescribe (1) how notice to participants and beneficiaries must be given and (2) any additional reporting requirements deemed necessary.

ERISA Technical Release 91–1 provides guidance on how to satisfy the subject ERISA notice requirements. The Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. The Release also simplified the statutory filing requirements by providing that filing with the DOL would be deemed sufficient notice to both the DOL and the Department of the Treasury. ERISA section 101(e) authorizes this information collection. *See* 29 U.S.C. 1021(e).

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 the 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 DOL obtains OMB approval for this information collection under Control Number 1210–0084.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 11, 2018 (83 FR 15635).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0084. The OMB 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;
- 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 submission of responses.

Agency: DOL–EBSA.

Title of Collection: Employee Retirement Income Security Act of 1974 Technical Release 1991–1.

OMB Control Number: 1210–0084.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 4.

Total Estimated Number of Responses: 26,966.

Total Estimated Annual Time Burden: 422 hours.

Total Estimated Annual Other Costs Burden: $6,917.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 27, 2018.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2018–19100 Filed 8–31–18; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Wage and Hour Division

Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2019

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 13658, beginning January 1, 2019.

Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the Order), was signed on February 12, 2014, and raised the hourly minimum wage for workers performing work on or in connection with covered federal contracts to $10.10 per hour, beginning January 1, 2015, with annual adjustments thereafter as determined by the Secretary of Labor (the Secretary) in accordance with the methodology set forth in the Order. The Secretary's determination of the Executive Order minimum wage rate also affects the minimum hourly cash wage for tipped employees performing work on or in connection with covered contracts. The Secretary is required to provide notice to the public of the new minimum wage rate at least 90 days before the rate takes effect. The applicable minimum wage under the Executive Order is currently $10.35 per hour, in effect since January 1, 2018.

Pursuant to the Executive Order and its implementing regulations in the Code of Federal Regulations, notice is hereby given that beginning January 1, 2019, the Executive Order minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to $10.60 per hour. Notice is also hereby given that, beginning January 1, 2019, the required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to $7.40 per hour.

DATES: These new rates shall take effect on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Melissa Smith, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13658 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate

The Executive Order was signed on February 12, 2014, and raised the hourly minimum wage for workers performing work on or in connection with covered federal contracts to $10.10 per hour, beginning January 1, 2015, with annual adjustments thereafter in an amount determined by the Secretary pursuant to the Order. *See* 79 FR 9851. The Executive Order directed the Secretary

to issue regulations to implement the Order's requirements. *See* 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a Final Rule on October 7, 2014 to implement the Executive Order. *See* 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the Order.

The Executive Order and its implementing regulations require the Secretary to determine the applicable minimum wage rate for workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016. *See* 79 FR 9851; 29 CFR 10.1(a)(2), 10.5(a)(2), 10.12(a). Sections 2(a) and (b) of the Order establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. *See* 79 FR 9851. These provisions, which are implemented in 29 CFR 10.5(b), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

(i) Not less than the amount in effect on the date of such determination;

(ii) Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and

(iii) Rounded to the nearest multiple of $0.05.

Section 2(b) of the Executive Order further provides that, in calculating the annual percentage increase in the CPI–W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI–W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI–W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. *See* 79 FR 9851. To calculate the annual percentage increase in the CPI–W, the Department elected in its Final Rule implementing the Executive Order to compare such CPI–W for the most recent year available with the CPI–W for the preceding year. *See* 29 CFR 10.5(b)(2)(iii). In its Final Rule, the Department explained that it decided to compare the CPI–W for the most recent year available (instead of using the most recent month or quarter, as allowed by the Order) with the CPI–W for the preceding year, ''to minimize the impact of seasonal fluctuations on the Executive Order minimum wage rate.'' 79 FR 60666.

Once a determination has been made with respect to the new minimum wage rate, the Executive Order and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage takes effect. *See* 79 FR 9851; 29 CFR 10.5(a)(2), 10.12(c)(1). The regulations explain that the Administrator of the Department's Wage and Hour Division (the Administrator) will publish an annual notice in the **Federal Register** stating the applicable minimum wage rate at least 90 days before any new minimum wage takes effect. *See* 29 CFR 10.12(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on Wage Determinations OnLine (WDOL), *http://www.wdol.gov,* or any successor site; on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.,* and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.;* and by other means the Administrator deems appropriate. *See* 29 CFR 10.12(c)(2)(ii)–(iv).

Section 3 of the Executive Order requires contractors to pay tipped employees covered by the Order performing on or in connection with covered contracts an hourly cash wage of at least $4.90, beginning on January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the Order when combined with the cash wage. *See* 79 FR 9851–52; 29 CFR 10.28(a). The Order further provides that, in each succeeding year, beginning January 1, 2016, the required cash wage must increase by $0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage. *Id.* For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rounded to the nearest $0.05. *Id.* At all times, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. *Id.*

The Executive Order minimum wage and the cash wage required for tipped employees are currently $10.35 and $7.25 per hour, respectively. The Department announced these rates on September 15, 2017, 82 FR 43408, and the rates took effect on January 1, 2018.

II. The 2019 Executive Order Minimum Wage Rate

Using the methodology set forth in the Executive Order and summarized above, the Department must first determine the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted), as published by BLS, to determine the new Executive Order minimum wage rate. In calculating the annual percentage increase in the CPI–W, the Department must compare the CPI–W for the most recent year available with the CPI–W for the preceding year. The Department therefore compares the percentage change in the CPI–W between the most recent year (*i.e.,* the most recent four quarters) and the prior year (*i.e.,* the four quarters preceding the most recent year). The Department then increases the current Executive Order minimum wage rate by the resulting annual percentage change and rounds to the nearest multiple of $0.05.

In order to determine the Executive Order minimum wage rate beginning January 1, 2019, the Department therefore calculated the CPI–W for the most recent year by averaging the CPI–W for the four most recent quarters, which consist of the first two quarters of 2018 and the last two quarters of 2017 (*i.e.,* July 2017 through June 2018). The Department then compared that data to the average CPI–W for the preceding year, which consists of the first two quarters of 2017 and the last two quarters of 2016 (*i.e.,* July 2016 through June 2017). Based on this methodology, the Department determined that the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted) was 2.337 percent. The Department then applied that annual percentage increase of 2.337 percent to the current Executive Order hourly minimum wage rate of $10.35, which resulted in a wage rate of $10.592 (($10.35 × 0.02337) + $10.35); however, pursuant to the Executive Order, that rate must be rounded to the nearest multiple of $0.05.

The new Executive Order minimum wage rate that must generally be paid to workers performing on or in connection with covered contracts beginning January 1, 2019 is therefore $10.60 per hour.

III. The 2019 Executive Order Minimum Cash Wage for Tipped Employees

As noted above, section 3 of the Executive Order provides a methodology to determine the amount

of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Because the cash wage for tipped employees reached 70 percent of the Executive Order minimum wage beginning on January 1, 2018 (*i.e.,* $7.25 per hour compared to $10.35 per hour), future updates to the cash wage for tipped employees must continue to set the rate at 70 percent of the full Executive Order minimum wage. Seventy percent of the new Executive Order minimum wage rate of $10.60 is $7.42. Because the Executive Order provides that the rate must be rounded to the nearest $0.05, the new minimum hourly cash wage for tipped workers performing on or in connection with covered contracts beginning January 1, 2019 is therefore $7.40 per hour.

IV. Appendices

Appendix A to this notice provides a comprehensive chart of the CPI–W data published by BLS that the Department used to calculate the new Executive Order minimum wage rate based on the methodology explained herein. Appendix B to this notice sets forth an updated version of the Executive Order poster that the Department published with its Final Rule, reflecting the updated wage rates that will be in effect beginning January 1, 2019. *See* 79 FR 60732–33. Pursuant to 29 CFR 10.29, contractors are required to notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. Contractors with employees covered by the Fair Labor Standards Act who are performing on or in connection with a covered contract may satisfy the notice requirement by displaying the poster set forth in Appendix B in a prominent or accessible place at the worksite.

Dated: August, 22, 2018.

Bryan Jarrett,

Acting Administrator, Wage and Hour Division.

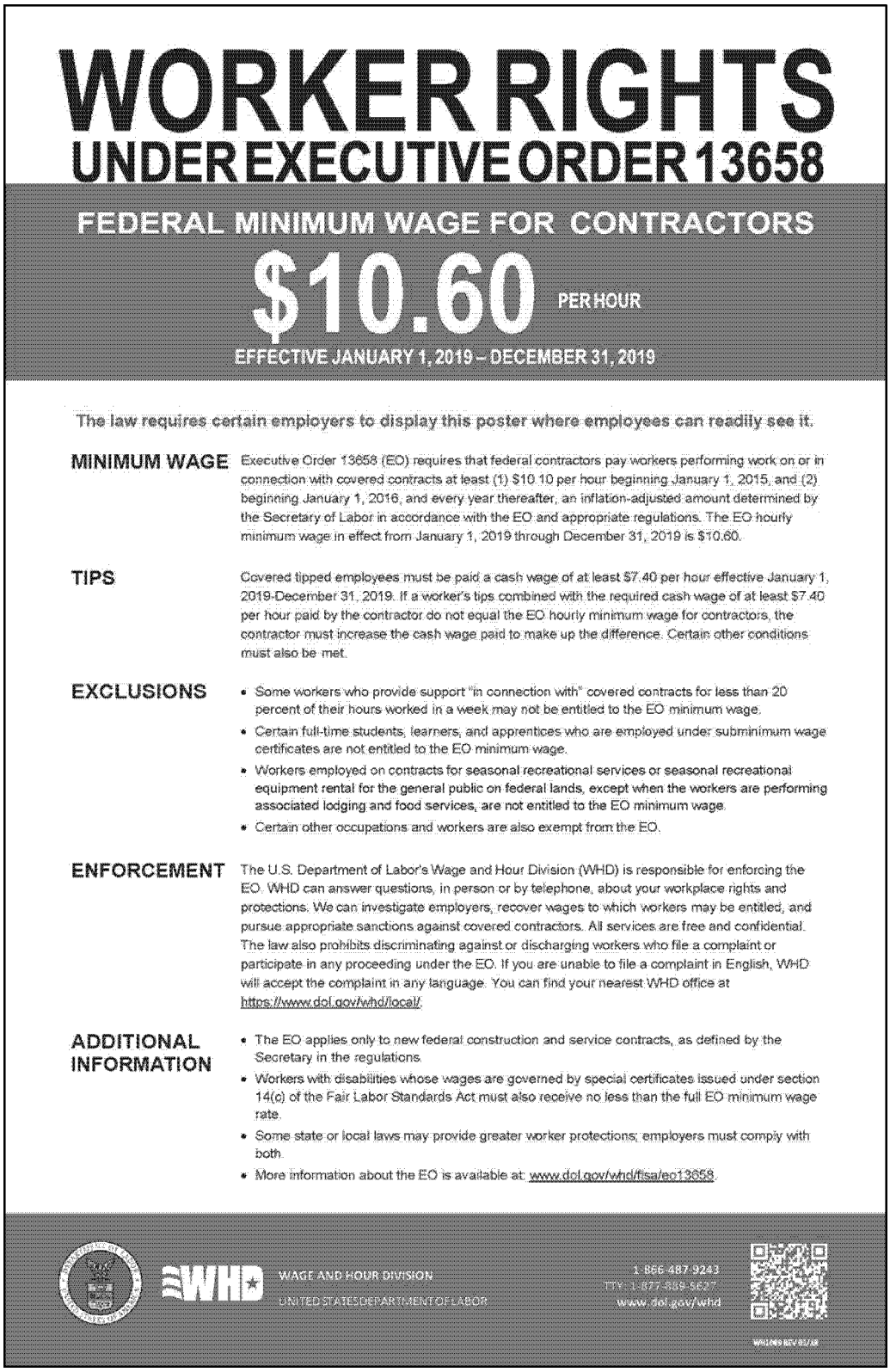
Appendix A: Data Used To Determine Executive Order 13658 Minimum Wage Rate Effective January 1, 2019

Data Source: Consumer Price Index for Urban wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted).

	Quarter 3			Quarter 4			Quarter 1			Quarter 2			Annual Average
2016Q3 to 2017Q2	234.771	234.904	235.495	235.732	235.215	235.390	236.854	237.477	237.656	238.432	238.609	238.813	236.6123
2017Q3 to 2018Q2	238.617	239.448	240.939	240.573	240.666	240.526	241.919	242.988	243.463	244.607	245.770	246.196	242.1427
Annual Percentage Increase													2.337%

Appendix B: Updated Version of the Executive Order 13658 Poster

BILLING CODE 4510–27–P



WORKER RIGHTS
UNDER EXECUTIVE ORDER 13658

FEDERAL MINIMUM WAGE FOR CONTRACTORS

$10.60 PER HOUR

EFFECTIVE JANUARY 1, 2019 – DECEMBER 31, 2019

The law requires certain employers to display this poster where employees can readily see it.

MINIMUM WAGE Executive Order 13658 (EO) requires that federal contractors pay workers performing work on or in connection with covered contracts at least (1) $10.10 per hour beginning January 1, 2015, and (2) beginning January 1, 2016, and every year thereafter, an inflation-adjusted amount determined by the Secretary of Labor in accordance with the EO and appropriate regulations. The EO hourly minimum wage in effect from January 1, 2019 through December 31, 2019 is $10.60.

TIPS Covered tipped employees must be paid a cash wage of at least $7.40 per hour effective January 1, 2019-December 31, 2019. If a worker's tips combined with the required cash wage of at least $7.40 per hour paid by the contractor do not equal the EO hourly minimum wage for contractors, the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.

EXCLUSIONS

- Some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week may not be entitled to the EO minimum wage.
- Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the EO minimum wage.
- Workers employed on contracts for seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands, except when the workers are performing associated lodging and food services, are not entitled to the EO minimum wage.
- Certain other occupations and workers are also exempt from the EO.

ENFORCEMENT The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing the EO. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers, recover wages to which workers may be entitled, and pursue appropriate sanctions against covered contractors. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the EO. If you are unable to file a complaint in English, WHD will accept the complaint in any language. You can find your nearest WHD office at https://www.dol.gov/whd/local/.

ADDITIONAL INFORMATION

- The EO applies only to new federal construction and service contracts, as defined by the Secretary in the regulations.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must also receive no less than the full EO minimum wage rate.
- Some state or local laws may provide greater worker protections; employers must comply with both.
- More information about the EO is available at: www.dol.gov/whd/fisa/eo13658.

WHD WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd

WH1088 REV 01/18

[FR Doc. 2018–19166 Filed 8–31–18; 8:45 am]

BILLING CODE 4510–27–C

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

AGENCY: Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general 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 (PRA95). This program helps to 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, the Office of Workers' Compensation Programs is soliciting comments concerning its proposal to extend OMB approval of the information collection: Statement of Recovery (SOR) Forms (CA–1108 and CA–1122). 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 November 5, 2018.

ADDRESSES: You may submit comments by mail, delivery service or by hand to Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210; by fax (202) 354–9647; or by Email *ferguson.yoon@dol.gov*. Please use only one method of transmission for comments (mail/delivery, fax, or Email). Please note that comments submitted after the comment period will not be considered.

SUPPLEMENTARY INFORMATION:

I. Background: A Federal employee who sustains a work-related injury is entitled to receive compensation under the Federal Employees' Compensation Act (FECA). If that injury is caused under circumstances that create a legal liability in a third party to pay damages, the FECA authorizes the Secretary of Labor to require the employee to assign his or her right of action to the United States or to prosecute the action in his or her own name. *See* 5 U.S.C. 8131.

When the employee receives a payment for his or her damages, whether from a final court judgment on or a settlement of the action, section 8132 of the FECA (5 U.S.C. 8132) provides that the employee ''shall refund to the United States that amount of compensation paid by the United States. . . .'' To enforce the United States' statutory right of reimbursement, the Office of Workers' Compensation Programs (OWCP) has promulgated regulations. The regulations require a FECA beneficiary to report these types of payments (20 CFR 10.710) and submit the detailed information necessary to calculate the amount of the refund and surplus, if any, according to the formula in the statute (20 CFR 10.707(e)).

The information collected by Form CA–1108 and Form CA–1122 from the FECA beneficiary includes this information and is necessary to calculate the amount of the refund and surplus owed to the United States from the FECA beneficiary's settlement or judgment, as required in the statute and the regulations. This information collection is currently approved for use through November 30, 2018.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* 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.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently approved information collection in order to exercise its responsibility to enforce the United States' right to this refund. The information collected with Form CA–1108 and Form CA–1122 is used by SOL personnel to determine the amount to be reimbursed to the United States out of the proceeds of an action asserted by an injured Federal employee against a liable third party for a compensable injury.

Agency: Office of Workers' Compensation Program.

Type of Review: Extension.

Title: Statement of Recovery Forms.

OMB Number: 1240–0001.

Agency Number: CA–1108 and CA–1122.

Affected Public: Business or other for-profit, Individuals or households.

Form	Time to complete (min.)	Frequency of response	Number of respondents	Number of responses	Hours burden
CA–1108 Business Respondent	30	1	928	928	464
CA–1122 Individual Respondent	15	1	10	10	3
Totals	NA	NA	938	938	467

Total Respondents: 938.

Total Annual Responses: 938.

Average Time per Response: 15–30 minutes.

Estimated Total Burden Hours: 467.

Frequency: As needed.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $249.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 27, 2018.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2018–19165 Filed 8–31–18; 8:45 am]

BILLING CODE 4510–CH–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 18–10]

Establishment of MCC Economic Advisory Council and Call for Nominations

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, MCC intends to establish the MCC Economic Advisory Council (''The EAC''), and is hereby soliciting representative nominations. The EAC shall serve MCC in a solely advisory capacity and provide advice and guidance to Millennium Challenge Corporation (MCC) economists, evaluators, leadership of the Department of Policy and Evaluation (DPE), and senior MCC leadership regarding relevant trends in development economics, applied economic and evaluation methods, poverty analytics, as well as modeling, measuring, and evaluating development interventions, including without limitation social and gender inequities. In doing so, an overarching purpose of the EAC will be to sharpen MCC's analytical methods and capacity in support of continuing development effectiveness. It will also serve as a sounding board and reference group for assessing and advising on strategic policy innovations and methodological directions in MCC.

DATES: Nominations for EAC members must be received on or before 5 p.m. EDT on October 15, 2018. Further information about the nomination process is included below. MCC plans to host the first EAC meeting in late 2018. The EAC will meet at least one time per year in Washington, DC or via video/teleconferencing.

ADDRESSES: All nomination materials or requests for additional information should be emailed to MCC's Economic Advisory Council Designated Federal Officer, Brian Epley at *MCCEACouncil@mcc.gov* or mailed to Millennium Challenge Corporation, Attn: Brian Epley, 1099 14th St. NW, Suite 700, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Brian Epley, 202.772.6515, *MCCEACouncil@mcc.gov.*

SUPPLEMENTARY INFORMATION: The EAC will focus on issues related to the analytical products and strategy used as inputs to compact and threshold program development and decision making, on learning from MCC experience about program effectiveness and impact, and to reflect on the broader global development trends and context of MCC's work. The EAC will provide advice, recommendations, and guidance from experts in academia and the international development community on the design and implementation of programs in a structured and integrated manner. The Vice President for MCC's Department of Policy and Evaluation affirms that the creation of the EAC is necessary and in the public interest. The EAC is seeking members from a range of academic organizations, independent think tanks, and international development agencies. Members will be chosen to represent a diversity of expertise, background, and geographic experience.

The EAC will provide advice to MCC on issues related to growth and development in low and middle income countries including:

1. New perspectives on economic development;
2. Innovative approaches to growth analytics;
3. Innovations in program and project evaluation;
4. Applied microeconomics and cost-benefit analytics;
5. Poverty and income dynamics;
6. Social development and the economics of gender; and
7. Other innovations in the field of development economics and evaluation.

Additional information about MCC and its portfolio can be found at *www.mcc.gov.* The EAC shall consist of not more than twenty (20) individuals who are recognized experts in their field, academics, innovators and thought leaders, representing (without limitation) academic organizations, independent think tanks, international development agencies, multilateral and regional development financial institutions, and foundations. Efforts will be made to include expertise from developing countries, within the resource constraints of the MCC to support logistic costs.

Qualified individuals may self-nominate or be nominated by any individual or organization. To be considered for the EAC, nominators should submit the following information:

- Name, title, organization and relevant contact information (including phone and email address) of the individual under consideration;
- A letter containing a brief biography for the nominee and description why the nominee should be considered for membership;
- CV including professional and academic credentials;

Please do not send company, or organization brochures or any other information. Materials submitted should total two pages or less, excluding CV. Should more information be needed, MCC staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources.

All members of the EAC will be independent of the agency, representing the views and interests of their respective industry or area of expertise, and not as Special Government Employees. All members shall serve without compensation. The duties of the EAC are solely advisory and any determinations to be made or actions to be taken on the basis of EAC advice shall be made or taken by appropriate officers of MCC.

Nominees selected for appointment to the EAC will be notified by return email and receive a letter of appointment. A selection team will review the nomination packages. The selection team will make recommendations regarding membership to the Vice President for MCC's Department of Policy and Evaluation based on criteria including: (1) Professional experience, and knowledge; (2) academic field and expertise; (3) experience within regions in which MCC works; (4) contribution of diverse regional or technical professional perspectives, and (5) availability and willingness to serve.

In the selection of members for the EAC, MCC will seek to ensure a balanced representation and consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the EAC.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical disability, marital status, or sexual orientation.

Dated: August 28, 2018.

Jeanne M. Hauch,

VP/General Counsel and Corporate Secretary.

[FR Doc. 2018–19039 Filed 8–31–18; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[18–066]

Notice of Centennial Challenges CO_2 Conversion Challenge Phase 1

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges CO_2 Conversion Challenge Phase 1.

SUMMARY: This notice is issued in accordance with the NASA Prize Authority. Phase 1 of the CO_2 Conversion Challenge is open, and teams that wish to compete may now register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. NASA envisions this competition having two phases with a total prize purse of up to $1 million. Phase 1 (the current phase) is the Concept Phase with a prize purse of up to $250,000 to demonstrate capabilities to develop technologies to manufacture ''food'' for microbial bioreactors from CO_2 and hydrogen molecules, with the ultimate goal of producing glucose. The initiation of Phase 2, a Demonstration Challenge with a prize purse of up to $750,000, is contingent on the emergence of promising submissions in Phase 1 that demonstrate a viable approach to achieve the Challenge goals. The official rules for Phase 2 will be released prior to the opening of Phase 2. NASA is providing the prize purse, and NASA Centennial Challenges will be managing the Challenge with support from Common Pool.

DATES: Challenge registration for Phase 1 opens August 30, 2018, and will remain open until 6:00 p.m. Eastern Time on January 24, 2019.

Other important dates:

February 28, 2019 Phase 1 Submission Deadline—no further requests for review will be accepted after this date

ADDRESSES: Phase 1 of the CO_2 Conversion Challenge will be executed at the participants' facility or lab.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the CO_2 Conversion Challenge, please visit: *www.co2conversionchallenge.org.*

For general information on the NASA Centennial Challenges Program please visit: *http://www.nasa.gov/challenges.* General questions and comments regarding the program should be addressed to Monsi Roman, Centennial Challenges Program, NASA Marshall Space Flight Center Huntsville, AL 35812. Email address: *hq-stmd-centennialchallenges@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Summary

Future planetary habitats on Mars will require a high degree of self-sufficiency. This requires a concerted effort to both effectively recycle supplies brought from Earth and use local resources such as CO_2, water and regolith to manufacture mission-relevant products. Human life support and habitation systems will treat wastewater to make drinking water, recover oxygen from CO_2, convert solid wastes to useable products, grow food, and specially design equipment and packaging to allow reuse in alternate forms. In addition, In-situ Resource Utilization (ISRU) techniques will use available local materials to generate substantial quantities of products to supply life support needs, propellants and building materials, and support other In-Space Manufacturing (ISM) activities.

Many of these required mission products such as food, nutrients, medicines, plastics, fuels, and adhesives are organic, and are comprised mostly of carbon, hydrogen, oxygen and nitrogen molecules. These molecules are readily available within the Martian atmosphere (CO_2, N_2) and surface water (H_2O), and could be used as the feedstock to produce an array of desired products. While some products will be most efficiently made using physicochemical methods or photosynthetic organisms such as plants and algae, many products may best be produced using heterotrophic (organic substrate utilizing) microbial production systems. Terrestrially, commercial heterotrophic bioreactor systems utilize fast growing microbes combined with high concentrations of readily metabolized organic substrates, such as sugars, to enable very rapid rates of bio-product generation.

The type of organic substrate used strongly affects the efficiency of the microbial system. For example, while an organism may be able to use simple organic compounds such as formate (1-carbon) and acetate (2-carbon), these ''low-energy'' substrates will typically result in poor growth. In order to maximize the rate of growth and reduce system size and mass, organic substrates that are rich in energy and carbon, such as sugars, are needed. Sugars such as D-Glucose, a six-carbon sugar that is used by a wide variety of model heterotrophic microbes, is typically the preferred organic substrate for commercial terrestrial microbial production systems and experimentation. There are a wide range of other compounds, such as less complex sugars and glycerol that could also support relatively rapid rates of growth.

To effectively employ microbial bio-manufacturing platforms on planetary bodies such as Mars, it is vital that the carbon substrates be made on-site using local materials. However, generating complex compounds like glucose on Mars presents an array of challenges. While sugar-based substrates are inexpensively made in bulk on Earth from plant biomass, this approach is currently not feasible in space. Alternatively, current physicochemical processes such as photo/electrochemical and thermal catalytic systems are able to make smaller organic compounds such as methane, formate, acetate and some alcohols from CO_2; however, these systems have not been developed to make more complex organic molecules, such as sugars, primarily because of difficult technical challenges combined with the low cost of obtaining sugars from alternate methods on Earth. Novel research and development is required to create the physicochemical systems required to directly make more complex molecules from CO_2 in space environments. It is hoped that advancements in the generation of suitable microbial substrates will spur interest in making complex organic compounds from CO_2 that could also serve as feedstock molecules in traditional terrestrial chemical synthesis and manufacturing operations.

The CO_2 Conversion Challenge is devoted to fostering the development of CO_2 conversion systems that can effectively produce singular or multiple molecular compounds identified as desired microbial manufacturing ingredients and/or that provide a significant advancement of physicochemical CO_2 conversion for the production of useful molecules.

I. Prize Amounts

Phase 1 of the CO_2 Conversion Challenge total prize purse is up to $250,000 (two-hundred fifty thousand dollars) to be awarded to up to five (5) top teams. Up to five (5) top teams will be selected based on judges' scoring and awarded $50,000 (fifty thousand dollars) each.

II. Eligibility To Participate and Win Prize Money

NASA welcomes applications from individuals, teams, and organization or entities that have a recognized legal existence and structure under applicable law (State, Federal or Country) and that are in good standing in the jurisdiction under which they are organized with the following restrictions:

1. Individuals *must be* U.S. citizens or permanent residents of the United States and *must be* 18 years of age or older.

2. Organizations *must be* an entity incorporated in and maintaining a primary place of business in the United States.

3. Teams *must be* comprised of otherwise eligible individuals or

organizations, and led by an otherwise eligible individual or organization.

4. Teams *must* conduct their demonstration work in facilities based in the United States, to include AK, HI and U.S. territories.

U.S. government employees may enter the competition, or be members of prize-eligible teams, so long as they are not acting within the scope of their Federal employment, and they rely on no facilities, access, personnel, knowledge or other resources that are available to them as a result of their employment except for those resources available to all other participants on an equal basis. U.S. government employees participating as individuals, or who submit applications on behalf of an otherwise eligible organization, will be responsible for ensuring that their participation in the Competition is permitted by the rules and regulations relevant to their position and that they have obtained any authorization that may be required by virtue of their government position. Failure to do so may result in the disqualification of them individually or of the entity which they represent or in which they are involved.

Foreign citizens may only participate through an eligible U.S. entity as:

i. An employee of such entity,

ii. A full-time student of such entity, if the entity is a university or other accredited institution of higher learning,

iii. An owner of such entity, so long as foreign citizens own less than 50% of the interests in the entity, OR

iv. A contractor under written contract to such entity.

No Team Member shall be a citizen of a country on the NASA Export Control Program list of designated countries in Category II, Countries determined by the Department of State to support terrorism. The current list of designated countries can be found at *http://oiir.hq.nasa.gov/nasaecp/.* As of July 12, 2018, only 4 countries are in category II (Iran, North Korea, Sudan, and Syria). Please check the link for latest updates.

A team-designated team lead shall be responsible for the actions of and compliance with the rules, including prize eligibility rules, by all members of his or her team.

The eligibility requirements can also be found on the official challenge site: *www.co2conversionchallenge.org.*

III. Intellectual Property

Each application should reflect the anticipated ownership, use, and licensing of any intellectual property. The Team represents and warrants that the Entry is an original work created solely by the Team, that the Team own all Intellectual Property in and to the Entry, and that no other party has any right, title, claim or interest in the Entry, except as expressly identified by the Team to NASA in writing in the application. NASA claims no right, title, or interest to any such intellectual property solely as a consequence of the Team's participation in the competition, including the winning of a prize. NASA reserves the right to share any submissions received with its civil servants and contractors, and reserves the right to approach individual participants about any future opportunities at the conclusion of the competition.

IV. Official Rules

The complete official rules for Phase 1 of the CO_2 Conversion Challenge can be found at: *www.co2conversionchallenge.org.*

Cheryl Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2018–18925 Filed 8–31–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–057]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by October 4, 2018. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA), National Archives and Records Administration, 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in

which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Forest Service (DAA–0095–2018–0015, 1 item, 1 temporary item). General correspondence, policies, and project reports related to pesticide development, use, management, and safety.

2. Department of Agriculture, Forest Service (DAA–0095–2018–0022, 1 item, 1 temporary item). Administrative policies and procedures, correspondence, memoranda, and training records of the law enforcement program.

3. Department of Agriculture, Forest Service (DAA–0095–2018–0029, 1 item, 1 temporary item). General correspondence, coordination, and progress records related to energy program management.

4. Department of Agriculture, Forest Service (DAA–0095–2018–0030, 2 items, 2 temporary items). Correspondence, applications, and supporting documents related to the management and tracking of grazing permit applications.

5. Department of Agriculture, Forest Service (DAA–0095–2018–0031, 1 item, 1 temporary item). General correspondence and inquiries related to nonstructural range improvements.

6. Department of Agriculture, Forest Service (DAA–0095–2018–0033, 1 item, 1 temporary item). General correspondence, statistical data, plans, and agreements related to the management of wild free-roaming horses and burros.

7. Department of Agriculture, Forest Service (DAA–0095–2018–0038, 1 item, 1 temporary item). General correspondence, statistical data, and reports related to the management of recreation sites and programs.

8. Department of Agriculture, Forest Service (DAA–0095–2018–0040, 1 item, 1 temporary item). Correspondence, inventory and monitoring reports, and general inquiries related to trail management.

9. Department of Agriculture, Forest Service (DAA–0095–2018–0041, 1 item, 1 temporary item). Correspondence, progress reports, and purchasing lists related to management of recycling and waste prevention programs acquisition activities.

10. Department of Agriculture, Forest Service (DAA–0095–2018–0043, 2 items, 2 temporary items). Correspondence, market trend data, rate and cost tables, and studies related to timber value appraisals.

11. Department of Homeland Security, Immigration and Customs Enforcement (DAA–0567–2018–0001, 2 items, 2 temporary items). Records of participation in alternatives to detention programs.

12. Department of Homeland Security, Transportation Security Administration (DAA–0560–2017–0021, 14 items, 14 temporary items). Occupational safety, health, and environment records.

13. Department of Justice, Criminal Division (DAA–0060–2018–0001, 3 items, 1 temporary item). Records documenting the administration of the United States Victims of State Sponsored Terrorism Fund, including non-significant administrative and operations records. Proposed for permanent retention are background and policy files, including claims forms and supporting case files.

14. Federal Maritime Commission, Office of the Inspector General (DAA–0358–2017–0003, 12 items, 8 temporary items). Records relating to routine investigations, audits and evaluations, and peer reviews. Proposed for permanent retention are records relating to significant audits and investigations, final policy, and reports to Congress.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2018–19068 Filed 8–31–18; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; NRC–2018–0192]

FirstEnergy Nuclear Operating Company; FirstEnergy Nuclear Generation, LLC; Davis-Besse Nuclear Power Station, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making a finding of no significant impact (FONSI) for a proposed issuance of an exemption to FirstEnergy Nuclear Operating Company (FENOC, the licensee), for Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, located in Ottawa County, Ohio. The proposed action would grant the licensee a partial exemption from the ''Physical barrier'' requirements in the NRC's regulations, to allow FENOC to continue using vertical, rather than angled, barbed wire fence toppings in certain limited protected area sections on-site. The NRC is considering an Exemption to Renewed Facility Operating License No. NPF–3, issued on December 8, 2015, and held by FENOC; and First Energy Nuclear Generation, LLC; for the operation of DBNPS, Unit No. 1.

DATES: The environmental assessment referenced in this document is available on September 4, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0192 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–2018–0192. 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*. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.

- *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: Bhalchandra K. Vaidya, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3308; email: *Bhalchandra.Vaidya@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of a partial exemption, pursuant to section 73.5 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific exemptions,'' from the ''Physical barrier'' requirements of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2 (1) ''fences,'' as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper, to FENOC and First Energy Nuclear Generation, LLC (collectively, the licensee), for DBNPS, Unit No. 1, located in Ottawa County, Ohio.

In accordance with 10 CFR 51.21, the NRC has prepared an environmental assessment (EA) that analyzes the environmental effects of the proposed action. Based on the results of the EA, and in accordance with 10 CFR 51.31(a), the NRC has prepared a FONSI for the proposed exemption.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would grant the licensee a partial exemption from the ''physical barrier'' requirements of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2(1) ''fences,'' as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper. As stated in 10 CFR 73.2, fences must be constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled inward or outward between 30 and 45 degrees from the vertical, with an overall height of not less than 8 feet, including the barbed topping. If approved, the partial exemption would allow the licensee to continue to use, without modification, the current configuration of vertical barbed wire fence toppings in limited protected area sections on-site, as specified on the maps submitted by the licensee in its letter dated March 16, 2018, to meet the regulatory requirements of 10 CFR part 73, ''Physical protection of plants and materials.'' Specifically, barbed wire on top of physical barrier fencing on gates, near gates, near interfaces with buildings, and on corners is oriented vertically.

The proposed action is in accordance with the licensee's application dated July 19, 2017, as supplemented by letters dated March 16, 2018; and May 2, 2018.

Need for the Proposed Action

Physical protection consists of a variety of measures to protect nuclear facilities and material against sabotage, theft, diversion, and other malicious acts. The NRC and its licensees use a graded approach for physical protection, consistent with the significance of the facilities or material to be protected. In so doing, the NRC establishes the regulatory requirements and assesses compliance, and licensees are responsible for providing the protection.

The proposed action is needed to allow the licensee to continue to use, without modification, the current configuration of vertical barbed wire fence toppings in certain limited protected area sections on-site, as shown on the maps submitted by the licensee in its March 16, 2018, letter. Currently, some of the barbed wire bracketing on top of the protected area physical barrier fencing do not meet certain design criteria specified in 10 CFR 73.2. Specifically, barbed wire on top of physical barrier fencing on gates, near gates, near interfaces with buildings, and on corners is oriented vertically.

Separate from this EA, the NRC staff is evaluating the licensee's proposed action which will be documented in a safety evaluation report. The staff's review will determine whether there is reasonable assurance that the site maintains adequate protection from the current physical barriers in accordance with the requirements in 10 CFR part 73.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental evaluation of the proposed action. The proposed action would grant the licensee a partial exemption from the ''physical barrier'' requirements of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2(1) ''fences,'' as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper. This will allow the licensee to continue using vertical, rather than angled, barbed wire fence toppings in certain limited protected area sections on site.

The proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota as the proposed action involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of non-radiological effluents. No changes to the plant's National Pollutant Discharge Elimination System permit are needed. In addition, there would be no noticeable effect on air pollutant emissions, socio-economic conditions in the region, no environment justice impacts, and no impacts to historic and cultural resources. Therefore, there would be no significant non-radiological impacts associated with the proposed action.

The NRC has concluded that the proposed action would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. There would be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes would be made to plant buildings or the site property. Therefore, implementing the proposed action would not result in a change to the radiation exposures to the public or radiation exposure to plant workers.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the exemption request would result in the licensee having to replace the vertical barbed wire fence toppings with angled barbed wire that meets the definition of ''Physical barrier'' in 10 CFR 73.2. This could result in temporary, minor changes in vehicular traffic and associated air pollutant emissions due

to any construction-related impacts of performing the necessary modifications, but no significant changes in ambient air quality would be expected.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

The NRC staff did not enter into consultation with any other Federal agency or with the State of Ohio regarding the environmental impact of the proposed action.

III. Finding of No Significant Impact

The licensee has requested an exemption from the ''physical barrier'' requirements of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2(1) ''fences,'' to allow the licensee to continue using vertical, rather than angled, barbed wire fence toppings in limited protected area sections on site. The NRC is considering issuing the requested exemption. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological and non-radiological impacts. This FONSI incorporates by reference the EA in Section II of this notice. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

The related environmental document is NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding the Davis-Besse Nuclear Power Station, Final Report,'' Supplement 52, Volumes 1 and 2, which provides the latest environmental review of current operations and a description of environmental conditions at DBNPS.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
FirstEnergy Nuclear Operating Company; Exemption Request for a Physical Barrier Requirement; Dated July 19, 2017	ML17200D139
FirstEnergy Nuclear Operating Company; Response to Request For Additional Information Regarding Exemption Request for a Physical Barrier Requirement; Dated March 16, 2018.	ML18078A033
FirstEnergy Nuclear Operating Company; Response to Request For Additional Information Regarding Exemption Request for a Physical Barrier Requirement; Dated May 2, 2018.	ML18122A133
NUREG–1437, Supplement 52, Vol. 1 and 2; Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding the Davis-Besse Nuclear Power Station, Final Report; Dated April 2015.	ML15112A098, ML15113A187

Dated at Rockville, Maryland, this 29th day of August 2018.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–19121 Filed 8–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0169]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of two amendment requests. The amendment requests are for Waterford Steam Electric Station, Unit 3, and Calvert Cliffs Nuclear Power Plant, Units 1 and 2. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by October 4, 2018. A request for a hearing must be filed by November 5, 2018. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by September 14, 2018.

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–2018–0169. 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: Janet C. Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0169, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0169.
- *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.

- *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–2018–0169, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *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

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an

exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 12, 2018, as supplemented by letter dated June 13, 2018. Publicly-available versions are in ADAMS under Accession Nos. ML18106A074 and ML18169A275, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would approve the use of the TRANFLOW code for determining pressure drops across the steam generator secondary side internal components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change from the use of manual calculations to the use of the computer code, TRANFLOW, to calculate steam generator (SG) secondary side internal loads during a postulated SLB [steam line break] has no effect on previously evaluated accident probabilities or consequences.

As stated in subsection 5.4.2 of the Waterford 3 [Updated Final Safety Analysis Report (UFSAR)], the SGs, including the tubes, are designed for the reactor coolant system transients listed in subsection 3.9.1.1 so that allowable stress limits are not exceeded for a specific number of cycles. In addition, the SG assemblies are designed to withstand the blowdown forces resulting from the severance of the steam nozzle. The SG component is not adversely affected by the use of TRANFLOW to calculate SLB internal pressure loads instead of manual calculations as the manual calculation method of evaluation is not described in the UFSAR. The proposed use of TRANFLOW does not adversely affect the ability to demonstrate that the design requirements of the reactor coolant pressure boundary are met during a postulated SLB event and all plant conditions. TRANFLOW uses a variety of well-known mathematical methods and empirical correlations in order to provide accurate solutions to thermal-hydraulic design problems using standard SG parameters and assumptions. TRANFLOW has been extensively validated and qualified by a variety of sources and methods. The use of the computer code, TRANFLOW, results in the calculation of internal loads during a postulated SLB event that are comparable to NRC approved codes, CEFLASH–4A, 4B and RELAP5. It has been shown that the results produced using TRANFLOW are acceptable when making engineering justifications for the design of the SG components.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed use of TRANFLOW to calculate SG secondary side internal loads during a postulated SLB event does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Operation of the SGs with secondary side components that have been analyzed for the effects of SLB internal loads using TRANFLOW have been shown to maintain SG primary or secondary side pressure boundary integrity during all plant conditions.

Therefore, based on the above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

To demonstrate suitability for its intended purpose, TRANFLOW was developed and maintained under the Westinghouse Quality Assurance (QA) Program, which is in compliance with the design control measures, including verification, stated under 10 CFR part 50, Appendix B. Verification of TRANFLOW has included comparison to test data, field data, manual calculations, and independent computer code prediction. Westinghouse has performed a comparison of TRANFLOW results with those of the NRC approved codes CEFLASH–4A. CEFLASH–4B and RELAP5 for analyzing SG SLB internal loads which shows that the results are technically equivalent. The [Nuclear Energy Institute] NEI 97–06, Rev. 3 (Reference 6 [of the letter dated April 12, 2018]) Steam Generator Structural Integrity Performance Criteria have been shown to be met during a postulated SLB with the use of the computer code, TRANFLOW, in the design of the replacement SGs (Reference 1 [of the letter dated April 12, 2018]). Meeting the NEI 97–06, Rev. 3 Structural Integrity Performance Criteria ensures that the SG tubes are capable of performing their safety related functions. SG tubes are relied on to maintain primary system pressure and temperature during all plant conditions. Additional loading conditions associated with the design basis accidents have been evaluated and it has been determined that the use of TRANFLOW would not contribute to SG tube burst or collapse. ASME Code Section III analysis stress limits continue to be met for the secondary side subcomponents (*e.g.,* tube support plates, steam dryer support beams and wall brackets, etc.) during all plant conditions with the use of TRANFLOW and adverse interactions with SG tubing will not occur. Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and (Calvert Cliffs), Calvert County, Maryland

Date of amendment request: February 25, 2016, as supplemented by letters dated April 3, 2017, and January 11, January 18, and June 21, 2018. Publicly-available versions are in ADAMS under Accession Nos. ML16060A223, ML17094A591, ML18011A665, ML18018B340, and ML18172A145.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the Calvert Cliffs Technical Specifications (TSs) related to completion times for required actions to provide the option to calculate longer, risk-informed completion times. The proposed amendments will also add a new program, the Risk Informed Completion Time Program, to TS Section 5.0, ''Administrative Controls.'' The methodology for using the Risk Informed Completion Time Program is described in Nuclear Energy Institute (NEI) topical report NEI 06–09, ''Risk-Informed Technical Specifications Initiative 4b, Risk-Managed Technical Specifications (RMTS) Guidelines,'' Revision 0–A (ADAMS Accession No. ML12286A322), which was approved by the NRC on May 17, 2007. The license amendment request (LAR) was originally noticed in the **Federal Register** on May 24, 2016 (81 FR 32806). The licensee originally proposed to adopt, with plant-specific variations, Technical Specification Task Force (TSTF) Traveler TSTF–505, Revision 1, ''Provide Risk-Informed Extended Completion Times—RITSTF [Risk Informed TSTF] Initiative 4b'' (ADAMS Accession No. ML111650552). By letter dated November 15, 2016 (ADAMS Accession No. ML16281A021), the NRC suspended its approval of TSTF–505, Revision 1, because of concerns identified during the review of plant-specific LARs for adoption of TSTF–505, Revision 1. In the letter, the NRC staff stated that it would continue reviewing applications already received and site-specific proposals to address the staff's concerns. Although the scope of the amendment request has not changed, the basis for the amendments will no longer rely on TSTF–505. This notice is being reissued in its entirety to include the description of the amendment request and proposed no significant hazards consideration determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes permit the extension of Completion Times provided the associated risk is assessed and managed in accordance with the NRC approved Risk-Informed Completion Time Program. The proposed changes do not involve a significant increase in the probability of an accident previously evaluated because the changes involve no change to the plant or its modes of operation. The proposed changes do not increase the consequences of an accident because the design-basis mitigation function of the affected systems is not changed and the consequences of an accident during the extended Completion Time are no different from those during the existing Completion Time.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed changes do not change the design, configuration, or method of operation of the plant. The proposed changes do not involve a physical alteration of the plant (no new or different kind of equipment will be installed).

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes permit the extension of Completion Times provided that risk is assessed and managed in accordance with the NRC approved Risk-Informed Completion Time Program. The proposed changes implement a risk-informed configuration management program to assure that adequate margins of safety are maintained. Application of these new specifications and the configuration management program considers cumulative effects of multiple systems or components being out of service and does so more effectively than the current TS.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville,

Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 16th of August 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2018–18067 Filed 8–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partners LLC's Consolidated Interim Spent Fuel Storage Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental impact statement; reopening of scoping comment period.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting public comments on the scope of the NRC's Environmental Impact Statement (EIS) for the Interim Storage Partners LLC (ISP) proposed consolidated interim storage facility for spent nuclear fuel, to be located on the Waste Control Specialists LLC (WCS) site in Andrews County, Texas. ISP requested on June 8, 2018, that the NRC resume its review, which had been suspended on April 18, 2017, and provided a revised license application. The NRC is reopening the public scoping comment period that had closed on April 28, 2017, to allow more time for members of the public to develop and submit their comments.

DATES: Submit comments by October 19, 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–2016–0231. 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.
- *Email Comments to:* You may email scoping comments to the Project's email address: *WCS_CISF_EIS@nrc.gov.*

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: James Park, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6954; email: *James.Park@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0231 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–2016–0231.
- *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.* Documents related to WCS' license application can be found under Docket Number 72–1050.
- *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.
- *Project web page:* Information related to the ISP CISF project can be accessed on the NRC's project web page at: *https://www.nrc.gov/waste/spent-*

fuel-storage/cis/waste-control-specialist.html.

B. Submitting Comments

Please include Docket ID NRC–2016–0231 in your comment submission. Comments received during this scoping period will be considered by the NRC, along with all comments received during the previous period, in determining the scope of the EIS. Scoping comments submitted during the previous period need not be resubmitted during this scoping period.

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

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

II. Discussion

On April 28, 2016, WCS submitted a license application to the NRC for a proposed consolidated interim storage facility for spent nuclear fuel (ADAMS Accession No. ML16132A533). The NRC accepted the WCS application for detailed review on January 26, 2017 (ADAMS Accession No. ML17018A168). On November 14, 2016, the NRC opened the public scoping period for its EIS on WCS' license application for a proposed consolidated interim storage facility for spent nuclear fuel (81 FR 79531). On April 18, 2017, WCS requested that the NRC temporarily suspend its review (ADAMS Accession No. ML17110A206). The EIS public scoping comment period closed on April 28, 2017 (82 FR 14039).

On June 8, 2018, ISP (a joint venture between WCS and Orano CIS LLC) requested that NRC resume its detailed review and submitted a revised license application (ADAMS Accession No. ML18166A003). On July 19, 2018, ISP provided an update to its application (ADAMS Accession No. ML18206A482). The NRC has decided to reopen the EIS public scoping comment period on this application until 45 days from October 19, 2018, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland, this 28th day of August 2018.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–19058 Filed 8–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412; NRC–2018–0193]

FirstEnergy Nuclear Operating Company; FirstEnergy Nuclear Generation, LLC; Beaver Valley Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making a finding of no significant impact (FONSI) for a proposed issuance of an exemption to FirstEnergy Nuclear Operating Company (FENOC, the licensee), for Beaver Valley Power Station (BVPS), Units 1 and 2, located in Beaver County, Pennsylvania. The proposed action would grant the licensee a partial exemption from the ''Physical barrier'' requirements in the NRC's regulations, to allow FENOC to continue using vertical, rather than angled, barbed wire fence toppings in certain limited protected area sections on-site. The NRC is considering an Exemption to Renewed Facility Operating License No. DPR–66, and Renewed Facility Operating License No. NPF–73, issued on November 5, 2009, and held by FENOC; and FirstEnergy Nuclear Generation, LLC for the operation of BVPS, Units 1 and 2.

DATES: The environmental assessment referenced in this document is available on September 4, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0193 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–2018–0193. 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.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *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: Bhalchandra K. Vaidya, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3308; email: *Bhalchandra.Vaidya@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of a partial exemption, pursuant to section 73.5 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific exemptions,'' from the ''Physical barrier'' requirement of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2(1) ''fences,'' as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper, to FENOC and FirstEnergy Nuclear Generation, LLC (collectively, the licensee), for BVPS, Units 1 and 2, located in Beaver County, Pennsylvania.

In accordance with 10 CFR 51.21, the NRC has prepared an environmental assessment (EA) that analyzes the environmental effects of the proposed action. Based on the results of the EA, and in accordance with 10 CFR 51.31(a), the NRC has prepared a finding of no significant impact (FONSI) for the proposed exemption.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would grant the licensee a partial exemption from the

''physical barrier'' requirements of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2 (1) ''fences,'' as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper. As stated in 10 CFR 73.2, fences must be constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled inward or outward between 30 and 45 degrees from the vertical, with an overall height of not less than eight feet, including the barbed topping. If approved, the partial exemption would allow the licensee to continue to use, without modification, the current configuration of vertical barbed wire fence toppings in limited protected area sections on-site, as specified on the maps submitted by the licensee in its letter dated March 16, 2018, to meet the regulatory requirements of 10 CFR part 73, ''Physical protection of plants and materials.'' Specifically, barbed wire on top of physical barrier fencing on gates, near gates, near interfaces with buildings, and on corners is oriented vertically.

The proposed action is in accordance with the licensee's application dated July 19, 2017, as supplemented by letters dated March 16, 2018; and May 2, 2018.

Need for the Proposed Action

Physical protection consists of a variety of measures to protect nuclear facilities and material against sabotage, theft, diversion, and other malicious acts. The NRC and its licensees use a graded approach for physical protection, consistent with the significance of the facilities or material to be protected. In so doing, the NRC establishes the regulatory requirements and assesses compliance, and licensees are responsible for providing the protection.

The proposed action is needed to allow the licensee to continue to use, without modification, the current configuration of vertical barbed wire fence toppings in certain limited protected area sections on-site, as shown on the maps submitted by the licensee in its March 16, 2018, letter. Currently, some of the barbed wire bracketing on top of the protected area physical barrier fencing do not meet certain design criteria specified in 10 CFR 73.2. Specifically, barbed wire on top of physical barrier fencing on gates, near gates, near interfaces with buildings, and on corners is oriented vertically.

Separate from this EA, the NRC staff is evaluating the licensee's proposed action, which will be documented in a safety evaluation report. The staff's review will determine whether there is reasonable assurance that the site maintains adequate protection from the current physical barriers in accordance with the requirements in 10 CFR part 73.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental evaluation of the proposed action. The proposed action would grant the licensee a partial exemption from the ''physical barrier'' requirements of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2(1) ''fences,'' as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper. This will allow the licensee to continue using vertical, rather than angled, barbed wire fence toppings in certain limited protected area sections on site.

The proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota as the proposed action involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of non-radiological effluents. No changes to the plant's National Pollutant Discharge Elimination System permit are needed. In addition, there would be no noticeable effect on air pollutant emissions, socio-economic conditions in the region, no environment justice impacts, and no impacts to historic and cultural resources. Therefore, there would be no significant non-radiological impacts associated with the proposed action.

The NRC has concluded that the proposed action would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. There would be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes would be made to plant buildings or the site property. Therefore, implementing the proposed action would not result in a change to the radiation exposures to the public or radiation exposure to plant workers.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the exemption request would result in the licensee having to replace the vertical barbed wire fence toppings with angled barbed wire that meets the definition of ''Physical barrier'' in 10 CFR 73.2. This could result in temporary, minor changes in vehicular traffic and associated air pollutant emissions due to any construction-related impacts of performing the necessary modifications, but no significant changes in ambient air quality would be expected.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

The NRC staff did not enter into consultation with any other Federal agency or with the State of Pennsylvania regarding the environmental impact of the proposed action.

III. Finding of No Significant Impact

The licensee has requested an exemption from the ''physical barrier'' requirements of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.21, ''fences,'' to allow the licensee to continue using vertical, rather than angled, barbed wire fence toppings in limited protected area sections on site. The NRC is considering issuing the requested exemption. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological and non-radiological impacts. This FONSI incorporates by reference the EA in Section II of this notice. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

The related environmental document is NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Beaver Valley Power Station, Units 1 and 2, Final Report,'' which provides the latest environmental review of current operations and a description of environmental conditions at BVPS, Units 1 and 2.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
FirstEnergy Nuclear Operating Company; Exemption Request for a Physical Barrier Requirement; Dated July 19, 2017.	ML17200D139.
FirstEnergy Nuclear Operating Company; Response to Request For Additional Information Regarding Exemption Request for a Physical Barrier Requirement; Dated March 16, 2018.	ML18078A033.
FirstEnergy Nuclear Operating Company; Response to Request For Additional Information Regarding Exemption Request for a Physical Barrier Requirement; Dated May 2, 2018.	ML18122A133.
NUREG–1437, Supplement 36; Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Beaver Valley Power Station, Units 1 and 2, Final Report; Dated May 2009.	ML091260011.

Dated at Rockville, Maryland, this 29th day of August 2018.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–19120 Filed 8–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0190]

Protective Order Templates for Hearings on Conformance With the Acceptance Criteria in Combined Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft protective order templates; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on draft protective order templates to be used in hearings associated with closure of inspections, tests, analyses, and acceptance criteria (ITAAC). The templates have the purpose of facilitating quick development of case-specific protective orders to support the accelerated ITAAC hearing schedule. Participants in ITAAC hearings may, but are not required to, use the templates as the basis for proposed protective orders.

DATES: Submit comments by October 19, 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–2018–0190. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For other questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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: Michael A. Spencer, Office of the General Counsel, U.S. Nuclear Regulatory Commission; telephone: 301–287–9115, email: *Michael.Spencer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0190 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–2018–0190.

• *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *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–2018–0190 in your comment submission. If you cannot submit your comments on the Federal Rulemaking website, *http://www.regulations.gov,* please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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

On July 1, 2016 (81 FR 43266), the NRC published final procedures for hearings on conformance with the acceptance criteria in combined licenses (COLs) issued under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR) (ITAAC Hearing Procedures). The acceptance criteria are part of the ITAAC included in the COL. In accordance with 10 CFR 52.103(g), the NRC must find that the acceptance criteria are met before facility operation may begin. Section 189a.(1)(B) of the Atomic Energy Act of 1954, as amended (AEA), provides members of the public an opportunity to request a hearing on the facility's compliance with the acceptance criteria. The ITAAC Hearing Procedures describe the requirements for such hearing requests and the procedures to be used throughout the hearing process. The procedures for a particular ITAAC proceeding will be imposed by case-specific orders, and the ITAAC Hearing Procedures reference templates to be used for such orders.

Some NRC proceedings involve sensitive information. For ITAAC proceedings in particular, the NRC

determined that a potential party may deem it necessary to obtain access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI) for the purpose of meeting Commission requirements for intervention. Therefore, the ITAAC Hearing Procedures include templates for orders governing requests for access to SUNSI and SGI. If a hearing participant qualifies for access to sensitive information, then a protective order and non-disclosure declaration would be needed to ensure that the information is protected appropriately. The presiding officer for a proceeding would issue the protective order, and recipients of the sensitive information would sign a non-disclosure declaration agreeing to protect the information in accordance with the protective order. Typically, the presiding officer issues a protective order in response to a motion from the hearing participants proposing a draft protective order and non-disclosure declaration for the presiding officer's consideration.

The NRC received comments on the proposed ITAAC Hearing Procedures suggesting that model templates would facilitate quick development of protective orders. In response, the NRC stated that protective order templates would be developed in a separate process allowing for stakeholder input.

To fulfill this commitment, the NRC has developed and is seeking comment on two draft protective order templates, one for SUNSI (ADAMS Accession No. ML18239A329) and one for SGI (ADAMS Accession No. ML18239A322). The NRC staff will make a final determination regarding issuance of the templates after consideration of any public comments received in response to this request. The final templates will be referenced in a future **Federal Register** notice. Participants in ITAAC hearings may, but are not required to, rely on the final protective order templates as the basis for proposed protective orders.

III. Discussion

The NRC has developed two draft protective order templates for ITAAC hearings, one for SUNSI and one for SGI. Although the draft templates were developed for use in ITAAC hearings, the vast majority of the content is not specific to ITAAC proceedings. The draft SUNSI and SGI templates have the following ITAAC-specific provisions:

- The templates reflect the possibility that the presiding officer might be a single legal judge assisted as appropriate by technical advisors.
- Consistent with the accelerated ITAAC hearing schedule, petitioners are given less time to execute non-disclosure declarations, and licensees and the NRC staff are given less time to provide SUNSI or SGI to the petitioners, than is ordinarily the case.

The draft SGI template also has two additional ITAAC-specific provisions:

- Consistent with the ITAAC Hearing Procedures, the draft template provides that SGI must be filed by overnight mail. Filings with SGI will not be made on the E-Filing system because the E-Filing system does not comply with SGI security requirements. This provision does not appear in the SUNSI template because SUNSI filings will be made through the E-Filing system.
- The draft template quotes the ITAAC Hearing Procedures as stating that the NRC will not delay its actions in completing the hearing or making the 10 CFR 52.103(g) finding because of delays from background checks for persons seeking access to SGI.

Both templates are based on current requirements and policies, and would, if appropriate, be updated as those requirements and policies change. For example, NRC policies will change in response to the National Archives and Records Administration's final rule, ''Controlled Unclassified Information,'' (81 FR 63324; September 14, 2016) (CUI Rule). The CUI Rule establishes government-wide requirements for protecting sensitive unclassified information. The CUI Rule applies both to the Federal government and to non-Federal entities receiving CUI from the Federal government. The NRC has not yet implemented the CUI Rule and does not expect to achieve implementation before the ITAAC hearings for Vogtle Units 3 and 4. But any future updating of the templates for subsequent ITAAC proceedings would reflect consideration of the CUI Rule and associated guidance.

A. Draft SUNSI Protective Order Template

The NRC uses the term SUNSI to refer to a broad spectrum of sensitive information that is neither classified nor SGI. While there are many types of SUNSI, the draft SUNSI protective order template is directed at protection of proprietary and security-related information, as discussed in SECY–15–0010 (January 20, 2015) (ADAMS Accession No. ML14343A747). The NRC focused on these types of SUNSI because of the NRC's experience with hearings involving reactors and its knowledge of the matters subject to ITAAC. If an ITAAC hearing involves another type of SUNSI with different protection requirements, the template can be adjusted accordingly.

In developing the draft SUNSI template, the NRC considered protective orders for proprietary and security-related information issued after 2006. The NRC also considered guidance in NRC Regulatory Issue Summary (RIS) 2005–26, ''Control of Sensitive Unclassified Non-Safeguards Information Related to Nuclear Power Reactors'' (ADAMS Accession No. ML051430228), dated November 7, 2005. RIS 2005–26 is specifically directed at protection of security-related information for reactors and states that such information is protected in much the same way as commercial or financial information.

Finally, the NRC considered the CUI Rule. Although the CUI Rule has not yet been implemented at the NRC, many CUI requirements are consistent with the existing protective provisions for SUNSI that provided the basis for the draft template. By aligning the provisions and terminology in the draft SUNSI template with the corresponding elements of the CUI Rule, the NRC hopes to facilitate any future update of the template to comply with the CUI Rule. The introductory discussion in the draft template identifies those CUI provisions that were excluded because they differ from, or go beyond, existing protective provisions for proprietary and security-related SUNSI for external stakeholders.

B. Draft SGI Protective Order Template

Safeguards Information is a special category of sensitive unclassified information defined in 10 CFR 73.2 and protected from unauthorized disclosure under AEA Section 147. Although SGI is unclassified information, it is handled and protected more like Classified National Security Information than like other sensitive unclassified information (*e.g.,* privacy and proprietary information). Requirements for access to SGI and requirements for SGI handling, storage, and processing are in 10 CFR part 73.

The SGI protective order template does not rely on prior SGI protective orders because they predate significant changes to the NRC's regulations on SGI and adjudicatory filings. Instead, the NRC combined general provisions from the draft SUNSI template with the SGI protection requirements in 10 CFR part 73 and the adjudicatory filing requirements in 10 CFR part 2. Also, while the NRC considered the CUI Rule when developing the draft SGI template, the draft template does not reflect any specific CUI provisions. The NRC has not yet implemented the CUI Rule, and in accordance with 32 CFR 2002.4(r), most CUI requirements do not apply to

SGI because the authorizing law and regulations for SGI provide specific handling controls.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./**Federal Register** citation
Draft Template for Protective Orders Governing the Disclosure and Use of Sensitive Unclassified Non-Safeguards Information (SUNSI) in Hearings Related to Conformance with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC).	ML18239A329.
Draft Template for Protective Orders Governing the Disclosure and Use of Safeguards Information (SGI) in Hearings Related to Conformance with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC).	ML18239A322.
Final Procedures for Conducting Hearings on Conformance With the Acceptance Criteria in Combined Licenses, dated July 1, 2016.	81 FR 43266.
SECY–15–0010, Final Procedures for Hearings on Conformance With the Acceptance Criteria in Combined Licenses, dated January 20, 2015.	ML14343A747.
Final Rule: Controlled Unclassified Information, dated September 14, 2016	81 FR 63324.
NRC Regulatory Issue Summary 2005–26, Control of Sensitive Unclassified Non-Safeguards Information Related to Nuclear Power Reactors, dated November 7, 2005.	ML051430228.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2018–0190. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2018–0190); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated at Rockville, Maryland, this 28th day of August 2018.

For the Nuclear Regulatory Commission.

Susan H. Vrahoretis,

Assistant General Counsel for New Reactor Programs, Office of the General Counsel.

[FR Doc. 2018–19023 Filed 8–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440; NRC–2018–0187]

FirstEnergy Nuclear Operating Company; FirstEnergy Nuclear Generation Company, LLC; Perry Nuclear Power Plant, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making a finding of no significant impact (FONSI) for a proposed issuance of an exemption to FirstEnergy Nuclear Operating Company (FENOC, the licensee), for Perry Nuclear Power Plant (PNPP), Unit No. 1, located in Lake County, Ohio. The proposed action would grant the licensee a partial exemption from the ''Physical barrier'' requirements in the NRC's regulations, to allow FENOC to continue using vertical, rather than angled, barbed wire fence toppings in certain limited protected area sections on-site. The NRC is considering an exemption to facility operating license no. NPF–58, issued on November 13, 1986, and held by FENOC, and FirstEnergy Nuclear Generation Company, LLC for the operation of PNPP, Unit No. 1.

DATES: The environmental assessment referenced in this document is available on September 4, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0187 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–2018–0187. 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.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *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: Bhalchandra K. Vaidya, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3308; email: *Bhalchandra.Vaidya@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of a partial exemption, pursuant to section 73.5 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific exemptions,'' from the ''Physical barrier'' requirement of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2(1) ''fences,'' as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper, to FENOC and FirstEnergy Nuclear Generation Company, LLC (collectively, the licensee), for PNPP, Unit No. 1, located in Lake County, Ohio.

In accordance with 10 CFR 51.21, the NRC has prepared an environmental assessment (EA) that analyzes the environmental effects of the proposed action. Based on the results of the EA and in accordance with 10 CFR 51.31(a), the NRC has prepared a FONSI for the proposed exemption.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would grant the licensee a partial exemption from the

''physical barrier'' requirement of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2(1) ''fences,'' as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper. As stated in 10 CFR 73.2, fences must be constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled inward or outward between 30 and 45 degrees from the vertical, with an overall height of not less than eight feet, including the barbed topping. If approved, the partial exemption would allow the licensee to continue to use, without modification, the current configuration of vertical barbed wire fence toppings in limited protected area sections on-site, as specified on the maps submitted by the licensee in its letter dated March 16, 2018, to meet the regulatory requirements of 10 CFR part 73, ''Physical protection of plants and materials.'' Specifically, barbed wire on top of physical barrier fencing on gates, near gates, near interfaces with buildings, and on corners is oriented vertically.

The proposed action is in accordance with the licensee's application dated July 19, 2017, as supplemented by letters dated March 16, 2018; and May 2, 2018.

Need for the Proposed Action

Physical protection consists of a variety of measures to protect nuclear facilities and material against sabotage, theft, diversion, and other malicious acts. The NRC and its licensees use a graded approach for physical protection, consistent with the significance of the facilities or material to be protected. In so doing, the NRC establishes the regulatory requirements and assesses compliance, and licensees are responsible for providing the protection.

The proposed action is needed to allow the licensee to continue to use, without modification, the current configuration of vertical barbed wire fence toppings in certain limited protected area sections on-site, as shown on the maps submitted by the licensee in its March 16, 2018, letter. Currently, some of the barbed wire bracketing on top of the protected area physical barrier fencing do not meet certain design criteria specified in 10 CFR 73.2. Specifically, barbed wire on top of physical barrier fencing on gates, near gates, near interfaces with buildings, and on corners is oriented vertically.

Separate from this EA, the NRC staff is evaluating the licensee's proposed action, which will be documented in a safety evaluation report. The staff's review will determine whether there is reasonable assurance that the site maintains adequate protection from the current physical barriers in accordance with the requirements in 10 CFR part 73.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental evaluation of the proposed action. The proposed action would grant the licensee a partial exemption from the ''physical barrier'' requirement of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2(1) ''fences,'' as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper. This will allow the licensee to continue using vertical, rather than angled, barbed wire fence toppings in certain limited protected area sections on site.

The proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota as the proposed action involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of non-radiological effluents. No changes to the plant's National Pollutant Discharge Elimination System permit are needed. In addition, there would be no noticeable effect on air pollutant emissions, socio-economic conditions in the region, no environment justice impacts, and no impacts to historic and cultural resources. Therefore, there would be no significant non-radiological impacts associated with the proposed action.

The NRC has concluded that the proposed action would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. There would be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes would be made to plant buildings or the site property. Therefore, implementing the proposed action would not result in a change to the radiation exposures to the public or radiation exposure to plant workers.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the exemption request would result in the licensee having to replace the vertical barbed wire fence toppings with angled barbed wire that meets the definition of ''Physical barrier'' in 10 CFR 73.2. This could result in temporary, minor changes in vehicular traffic and associated air pollutant emissions due to any construction-related impacts of performing the necessary modifications, but no significant changes in ambient air quality would be expected.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

The NRC staff did not enter into consultation with any other Federal agency or with the State of Ohio regarding the environmental impact of the proposed action.

III. Finding of No Significant Impact

The licensee has requested an exemption from the ''physical barrier'' requirement of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2(1) ''fences,'' to allow the licensee to continue using vertical, rather than angled, barbed wire fence toppings in limited protected area sections on site. The NRC is considering issuing the requested exemption. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological and non-radiological impacts. This FONSI incorporates by reference the EA in Section II of this notice. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

The related environmental document is NUREG–0884, ''Final Environmental Statement Related to the Operation of Perry Nuclear Power Plant, Units 1 and 2,'' which provides the latest description of environmental conditions at Perry Nuclear Power Plant, Unit No. 1.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
FirstEnergy Nuclear Operating Company; Exemption Request for a Physical Barrier Requirement; Dated July 19, 2017.	ML17200D139.
FirstEnergy Nuclear Operating Company; Response to Request For Additional Information Regarding Exemption Request for a Physical Barrier Requirement; Dated March 16, 2018.	ML18078A033.
FirstEnergy Nuclear Operating Company; Response to Request For Additional Information Regarding Exemption Request for a Physical Barrier Requirement; Dated May 2, 2018.	ML18122A133.
NUREG–0884; Final Environmental Statement Related to the Operation of Perry Nuclear Power Plant, Units 1 and 2; Dated August 1982.	ML15134A060.

Dated at Rockville, Maryland, this 29th day of August 2018.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–19122 Filed 8–31–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83975; File No. SR–MIAX–2018–14]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To List and Trade Options on the SPIKES™ Index

August 28, 2018.

On June 28, 2018, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') 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 permit the listing and trading of options on the SPIKES™ Index, which measures expected 30-day volatility of the SPDR S&P 500 ETF Trust. The proposed rule change was published for comment in the **Federal Register** on July 16, 2018.[3] The Commission has received no comments on the proposal.

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 for this filing is August 30, 2018.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act [5] and for the reasons stated above, the Commission designates October 14, 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 No. SR–MIAX–2018–14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19057 Filed 8–31–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83970; File No. SR–FICC–2017–022]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Loss Allocation Rules and Make Other Changes

August 28, 2018.

On December 18, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2017–022 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] to amend its loss allocation rules and make other conforming and technical changes.[3] The proposed rule change was published for comment in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83619 (July 11, 2018), 83 FR 32932.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, FICC filed the proposed rule change as advance notice SR–FICC–2017–806 with the Commission 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'') and Rule 19b–4(n)(1)(i) of the Act (''Advance Notice''). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published for comment in the **Federal Register** on January 30, 2018. 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. 12 U.S.C. 5465(e)(1)(H); Securities Exchange Act Release No. 82583 (January 24, 2018), 83 FR 4358 (January 30, 2018) (SR–FICC–2017–806). On April 10, 2018, the Commission required additional information from FICC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, 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. 12 U.S.C. 5465(e)(1)(D); *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.* 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, which was published in the **Federal Register** on August 6, 2018. Securities Exchange Act Release No. 83747 (July 31, 2018), 83 FR 38393 (August 6, 2018) (SR–FICC–2017–806). 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. 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. 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.* 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.

Register on January 8, 2018.[4] 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.[5] On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] 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.[7] On June 28, 2018, FICC filed Amendment No. 1 to the proposed rule change to amend and replace in its entirety the proposed rule change as originally filed on December 18, 2017.[8] The Commission did not receive any comments. This order approves the proposed rule change, as modified by Amendment No. 1 (hereinafter, ''Proposed Rule Change'').

I. Description

The Proposed Rule Change 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'') [9] in order to (1) modify each Division's loss allocation process; (2) align the Divisions' loss allocation rules among 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''); [10] (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.[11]

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 [12] 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.[13] 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 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

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[4] Securities Exchange Act Release No. 82427 (January 2, 2018), 83 FR 854 (January 8, 2018) (SR–FICC–2017–022).

[5] 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).

[6] Securities Exchange Act Release No. 82909 (March 20, 2018), 83 FR 12990 (March 26, 2018) (SR–FICC–2017–022).

[7] 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).

[8] Securities Exchange Act Release No. 83631 (July 13, 2018), 83 FR 34193 (July 19, 2018) (SR–FICC–2017–022) (''Notice of Amendment No. 1''). 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-an.htm* since June 29, 2018.

[9] 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.*

[10] 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.

[11] *See* Notice of Amendment No. 1, *supra* note 8.

[12] The term ''Member'' is defined in both the GSD Rules and the MBSD Rules, and has a different meaning under each. *See supra* note 9. 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.

[13] 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 9.

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.[14] 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) 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

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.[15] FICC's General Business Risk Capital Requirement, as defined in FICC's Clearing Agency Policy on Capital Requirements,[16] 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.[17] 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, and would be a mandatory contribution by FICC prior to any allocation of the loss among the applicable Division's members.[18] 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.[19] 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.[20]

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

[14] 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 9.

[15] 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.

[16] *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).

[17] 17 CFR 240.17Ad–22(e)(15).

[18] 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.

[19] 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.

[20] 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 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.

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.[21]

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.[22]

(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.[23] In other words, the proposed 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

[21] 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.

[22] 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.

[23] 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 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 9.

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.

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, 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.[24]

(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,[25] 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 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

[24] 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.

[25] If a member's Loss Allocation Cap exceeds the member's then-current Required Fund Deposit, it must still cover the excess amount.

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.[26] The GSD Rules and the MBSD Rules currently permit FICC to apply Clearing Fund to non-default losses.[27] 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.[28] 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.[29]

For both the GSD Rules and the MBSD Rules, FICC proposes to enhance 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 would 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 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

[26] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[27] 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.

[28] 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 9.

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 9.

[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 (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 9.

(4) deleting obsolete sections due to the proposal.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [30] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful review, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[31] Rule 17Ad–22(e)(4)(viii) under the Act,[32] Rule 17Ad–22(e)(13) under the Act,[33] and Rules 17Ad–22(e)(23)(i) and (ii) under the Act.[34]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that a registered clearing agency have rules designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency, and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[35]

The Commission believes that the proposal to change the loss allocation process is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. As described above, FICC proposes to make the following changes to its loss allocation process. 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 risk 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 the 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. However, 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 notices from members after multiple sequential loss events could cause heighten operational complexity and, therefore, risk for FICC, since FICC would have to process and track multiple notices while performing its other critical operations during a time of significant stress.

Therefore, the Commission believes that the proposed change to introduce an Event Period would provide a more defined and transparent structure, compared to the current loss allocation process described immediately above, helping to reduce complexity in and the resources needed to effectuate the process, thus mitigating operational risk. Overall, 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 current loss allocation approach laid out in FICC's 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

[30] 15 U.S.C. 78s(b)(2)(C).
[31] 15 U.S.C. 78q–1(b)(3)(F).
[32] 17 CFR 240.17Ad–22(e)(4)(viii).
[33] 17 CFR 240.17Ad–22(e)(13).
[34] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).
[35] 15 U.S.C. 78q–1(b)(3)(F).

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 the notice.

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 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 these 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 the 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.

Collectively, the Commission believes that the proposed changes to FICC's loss allocation process would provide greater transparency, certainty, and efficiency to FICC regarding the amount of resources and the instances in which FICC would apply the 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 the transparency, certainty, and efficiency would afford FICC better predictability regarding its risk exposure, and in turn, would allow a risk management process at FICC that is more effectively responsive to such events and would improve FICC's ability to continue to operate in a safe and sound manner during such events. Therefore, the Commission believes that these proposed changes would better equip FICC to assure the safeguarding of securities and funds which are in the custody or control of FICC.

The Commission believes that the proposed rule change to modify the use of MBSD Clearing Fund is designed to promote the prompt and accurate clearance and settlement of securities transactions. As described 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 establish a clearer right of FICC to use MBSD Clearing Fund in such situations. By establishing a more explicit right of FICC to access the funds at such times, FICC should be better positioned to manage risks presented by non-default losses and, thus, continue offering its services. Accordingly, the Commission believes that the change is designed to promote the prompt and accurate clearance and settlement of securities transactions 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 manage its non-default losses.

Finally, the Commission believes that the proposed rule changes to align FICC's loss allocation rules with the loss allocation rules of the other DTCC Clearing Agencies, to the extent practicable and appropriate, are designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. As described above, the alignment of FICC's loss allocation rules with the other DTCC Clearing Agencies 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, by removing potential unnecessary complexities and confusion due to different loss allocation rules of the DTCC Clearing Agencies, the Commission believes that the proposal is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

For the reasons above, the Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[36]

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 [37] 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.[38]

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 those 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.[39]

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.[40]

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.[41]

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.[42] 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.[43]

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.[44]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [45] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that proposed rule change SR–FICC–2017–022, as modified by Amendment No. 1, be, and it hereby is, approved [47] as of the date of this order or the date of a notice by the Commission authorizing FICC to implement advance notice SR–FICC–2017–806, as modified by Amendment No. 1, whichever is later.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19062 Filed 8–31–18; 8:45 am]

BILLING CODE 8011–01–P

[36] 15 U.S.C. 78q–1(b)(3)(F).

[37] 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.

[38] 17 CFR 240.17Ad–22(e)(4)(viii).

[39] *Id.*

[40] 17 CFR 240.17Ad–22(e)(13).

[41] *Id.*

[42] 17 CFR 240.17Ad–22(e)(23)(i).

[43] 17 CFR 240.17Ad–22(e)(23)(ii).

[44] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[45] 15 U.S.C. 78q–1.

[46] 15 U.S.C. 78s(b)(2).

[47] In approving the Proposed Rule Change, the Commission has considered the Proposed Rule Change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83968; File No. SR–CBOE–2018–060]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 6.49A, Transfer of Positions

August 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.49A to delete the provisions related to on-floor position transfers, amend the permissible reasons for and procedures related to off-floor position transfers, and make other nonsubstantive changes.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.49A to delete the provisions related to on-floor position transfers, amend the permissible reasons for and procedures related to off-floor position transfers, and make other nonsubstantive changes. Rule 6.49A specifies the circumstances under which Trading Permit Holders may effect transfers of positions, both on and off the trading floor, notwithstanding the prohibition in Rule 6.49(a).[3]

On-Floor Transfers

Rule 6.49A(a)(2) permits certain position transfers to occur on the floor of the exchange or on another options exchange. The procedures for such on-floor position transfers are set forth in Rule 6.49A(b) and (c), as well as Interpretations and Policies .01 through .03. The Exchange no longer wants to make available on-floor transfers of positions, so the proposed rule change deletes paragraphs (a)(2), (b), and (c), and Interpretations and Policies .01 through .03[4] from Rule 6.49A. The on-floor position transfer procedure is administratively burdensome on the Exchange, and is currently used by Trading Permit Holders on a limited basis. As the Exchange noted when the rule was adopted, the Exchange's ''on-floor'' procedure was intended to help ensure that Trading Permit Holders with a need to transfer positions in bulk as part of a sale or disposition of all or substantially all of a Trading Permit Holder's assets or options positions were able to get the best possible price for the positions while also ensuring that other Trading Permit Holders have an adequate opportunity to make bids and offers on the positions that are being transferred.[5] In addition, the Exchange noted the ''on-floor'' position transfer procedure could be used by Market-Makers that, for reasons other than a forced liquidation, such as an extended vacation, wished to liquidate their entire, or nearly their entire, open positions in a single set of transactions, subject to certain restrictions.[6]

For example, the Exchange's on-floor transfer of positions rule was also intended to address the common situation in which a Designated Primary Market-Maker (''DPM'') sold its business or in which a Market-Maker, for reasons other than a forced liquidation, such as an extended vacation, wished to liquidate its entire, or nearly entire, position in a single set of transactions.[7] Currently, because DPMs have been largely consolidated in the hands of firms rather than individuals, such transfers are, for the most part unnecessary; if an individual takes an extended vacation, another member of the firm handles the firm's book. Accordingly, the Exchange believes that the on-floor transfer of positions procedure no longer serves the uses for which is was originally adopted. The Exchange also notes that at least one other options exchange with a trading floor and a transfer of positions rule does not offer an on-floor transfer procedure.[8]

Off-Floor Position Transfers

Current Rule 6.49A(a)(1) lists the circumstances in which Trading Permit Holders may transfer their positions off the floor. The circumstances currently listed include: (i) The dissolution of a joint account in which the remaining Trading Permit Holder assumes the positions of the joint account; (ii) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions; (iii) positions transferred as part of a Trading Permit Holder's capital contribution to a new joint account, partnership, or corporation; (iv) the donation of positions to a not-for-profit corporation; (v) the transfer of positions to a minor under the Uniform Gifts to Minor law; and (vi) a merger or acquisition where continuity of ownership or management results.[9]

[3] Paragraph (a) of Rule 6.49 (Transactions Off the Exchange) generally requires transactions of option contracts listed on the Exchange for a premium in excess of $1.00 to be effected on the floor of the Exchange or on another exchange.

[4] The Exchange proposes to move the provision in Interpretation and Policy .03 that states the on-floor transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process to proposed paragraph (g), as that provision applies to both the current on-floor and off-floor position transfer procedures.

[5] *See* Exchange Act Release No. 36647 (December 28, 1995), 61 FR 566 (January 8, 1996) (Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and 2 to a Proposed Rule Change Relating to the Transfer of Positions on the Floor of the Exchange in Cases of Dissolution and other Situations) (SR–CBOE–95–36).

[6] *Id.* Among other restrictions, repeated and frequent use of the on-floor procedure in Rule 6.49A by a TPH is not permitted.

[7] *Id.*

[8] *See, e.g.,* Nasdaq OMX PHLX LLC (''Phlx'') 1058.

[9] The Exchange notes that other options exchanges have adopted off-floor position transfer procedures based on, and substantially similar to, the Exchange's procedure in Rule 6.49A(a)(1). *See, e.g.,* Nasdaq OMX PHLX LLC (''Phlx'') Rule 1058; and NYSE Arca, Inc. (''Arca'') Rule 6.78–O(d).

The Exchange proposes to add clarifying language to the first sentence of Rule 6.49A(a) to state that existing positions in options listed on the Exchange of a Trading Permit Holder or of a Non-Trading Permit Holder that are to be transferred on, from, or to the books of a Clearing Trading Permit Holder may be transferred off the Exchange (an ''off-floor transfer'') if the off-floor transfer involves one of the events listed in the Rule.[10] The proposed rule change clarifies that Rule 6.49A does not apply to products other than options listed on the Exchange, consistent with the Exchange's other trading rules.[11] It also clarifies that a Trading Permit Holder must be on one side of the transfer. The proposed rule change also clarifies that positions a Trading Permit Holder is transferring or receiving are held in the account of a Clearing Trading Permit Holder. This language is consistent with how off-floor transfers are currently effected. The proposed rule change also clarifies that both Trading Permit Holders and non-Trading Permit Holders may effect off-floor transfers, except under specified circumstances in which only a Trading Permit Holder may effect an off-floor transfer.[12]

The Exchange notes off-floor transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[13] Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt off-floor position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

The proposed rule change adds four events where an off-floor transfer would be permitted to occur.

• Proposed subparagraph (a)(1) permits an off-floor transfer to occur if it, pursuant to Rule 4.6 or 4.22, is an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error. This proposed rule change codifies previous, long-standing Exchange guidance regarding what off-floor transfers are permissible and will permit transactions to be properly recorded in the originally intended accounts.[14]

• Proposed subparagraph (a)(2) permits an off-floor transfer if it is a transfer of positions from one account to another account where there is no change in ownership involved (*i.e.,* the accounts are for the same Person [15]), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements.[16] The proposed rule change provides market participants with flexibility to maintain positions in accounts used for the same trading purpose in a manner consistent with their businesses. Such transfers are not intended to be transactions among different market participants, as there would be no change in ownership permitted under the provision, and would also not permit transfers among different trading units for which accounts are otherwise required to be maintained separately.[17]

• Proposed subparagraph (a)(3) similarly permits an off-floor transfer if it is a consolidation of accounts [18] where no change in ownership is involved. This proposed rule change is similar to rules of other options exchanges.[19]

• Proposed subparagraph (a)(10) permits an off-floor transfer if it is a transfer of positions through operation of law from death, bankruptcy, or otherwise.[20] This provision is consistent with applicable laws, rules, and regulations that legally require transfers in certain circumstances. This proposed rule change is consistent with the purposes of other circumstances in the current rule, such as the transfer of positions to a minor or dissolution of a corporation.

The Exchange believes these proposed events have similar purposes as those in the current rule, which is to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events.[21] As noted above, the proposed rule change is consistent with current Exchange guidance or rules of other self-regulatory organizations.

The proposed rule change renumbers current subparagraphs (a)(1)(i) through (v) to be proposed subparagraphs (a)(5) through (9) and moves current subparagraph (a)(1)(vi) to proposed subparagraph (a)(4), with nonsubstantive changes. These permissible circumstances for off-floor transfers are consistent with the rules of other options exchanges.[22]

Proposed paragraph (b) codifies Exchange guidance regarding certain restrictions on permissible off-floor transfers related to netting of open positions and to margin and haircut treatment. Proposed subparagraph (b)(1) states, unless otherwise permitted by Rule 6.49A, when effecting an off-floor transfer pursuant to paragraph (a), no position may net against another position (''netting''), and no position transfer may result in preferential margin or haircut treatment.[23] Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if a Trading Permit Holder wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the Rule, the Trading Permit Holder could not transfer the offsetting series, as they would net against each other and close the positions.

However, netting is permitted for off-floor transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market-Maker nominees are trading

[10] It is possible for positions transfers to occur between two Non-Trading Permit Holders. For example, one Non-Trading Permit Holder may transfer positions on the books of a Clearing Trading Permit Holder to another Non-Trading Permit Holder pursuant to the proposed rule.

[11] Proposed paragraph (h) also clarifies that the off-floor transfer procedure only applies to positions in options listed on the Exchange, and that transfers of non-Exchange-listed options and other financial instruments are not governed by Rule 6.49A.

[12] *See* proposed subparagraphs (a)(5) and (7).

[13] *See* proposed paragraph (h).

[14] *See* Cboe Options Regulatory Circular RG03–62. Note Rule 4.22 was not referenced in that circular, as it did not exist at that time. However, it contains similar language regarding corrections of errors as Rule 4.6, and therefore the Exchange believes it is appropriate to include in the proposed rule change. The proposed rule change is also similar to Cboe Futures Exchange, LLC (''CFE'') Rule 420(a)(i).

[15] Rule 1.1(ff) defines ''Person'' as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

[16] The proposed rule change is similar to CFE Rule 420(a)(ii).

[17] Various rules (for example, Regulation SHO in certain circumstances) require accounts to be maintained separately, and the proposed rule change is consistent with those rules.

[18] This refers to the consolidation of entire accounts (*e.g.,* combining two separate accounts (including the positions in each account into a single account)).

[19] *See, e.g.,* Phlx Rule 1058(a)(7); and Arca Rule 6.78–O(d)(1)(vii).

[20] The proposed rule change is similar to CFE Rule 420(a)(iii).

[21] *See* proposed paragraph (g).

[22] *See, e.g.,* Phlx Rule 1058(a)(1) through (6); and Arca Rule 6.78–O(d)(1)(i) through (vi).

[23] *See* Cboe Options Regulatory Circular RG03–62. For example, positions may not transfer from a customer, joint back office, or firm account to a Market-Maker account. However, positions may transfer from a Market-Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

for the same Trading Permit Holder organization, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at the Clearing Corporation. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market-Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation.[24] Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market-Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market-Maker may have a nominee with an appointment in class XYZ on Cboe Options, and have another nominee with an appointment in class XYZ on Phlx, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Cboe Options transactions and another for Phlx transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits off-floor transfers from these separate exchange-specific accounts into the Market-Maker's universal account in this circumstance to achieve this purpose.

Proposed paragraph (c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an off-floor transfer is effected may be:

(1) The original trade prices of the positions that appear on the books of the trading Clearing Trading Permit Holder, in which case the records of the transfer must indicate the original trade dates for the positions; [25] provided, transfers to correct errors bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices;

(2) mark-to-market prices of the positions at the close of trading on the transfer date;

(3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date; [26] or

(4) the then-current market price of the positions at the time the off-floor transfer is effected.[27]

This proposed rule change provides market participants that effect off-floor transactions with flexibility to select a transfer price based on the circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Proposed paragraph (d) requires a Trading Permit Holder and its Clearing Trading Permit Holder (to the extent that the Trading Permit Holder is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an off-floor transfer from or to the account of a Trading Permit Holder(s).[28] The notice must indicate:

- The Exchange-listed options positions to be transferred;
- the nature of the transaction;
- the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred;
- the name of the counterparty(ies);
- the anticipated transfer date;
- the method for determined the transfer price; and
- any other information requested by the Exchange.

The proposed notice will ensure the Exchange is aware of all off-floor transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules. Additionally, requiring notice from the Trading Permit Holder(s) and its Clearing Trading Permit Holder(s) will ensure both parties are in agreement with respect to the terms of the off-floor transfer. The proposed rule change is similar to rules of other options exchanges.[29] As noted in proposed subparagraph (d)(2), receipt of notice of an off-floor transfer does not constitute a determination by the Exchange that the off-floor transfer was effected or reported in conformity with the requirements of Rule 6.49A. Notwithstanding submission of written notice to the Exchange, Trading Permit Holders and Clearing Trading Permit Holders that effect off-floor transfers that do not conform to the requirements of Rule 6.49A will be subject to appropriate disciplinary action in accordance with the Rules.

Similarly, proposed paragraph (e) requires each Trading Permit Holder and each Clearing Trading Permit Holder that is a party to an off-floor transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (d)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Trading Permit Holder or Clearing Trading Permit Holder provide. The proposed rule change is similar to rules of other options exchanges.[30]

The proposed rule change moves current paragraph (d) regarding other exemptions to proposed paragraph (f). The exemptions permitted by this paragraph are those approved by the Exchange's president.[31] The proposed rule change permits the President or a designee to grant an exemption to the Rule 6.49(a) prohibition if, in his or her judgment, allowing the off-floor transfer is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. The proposed rule change updates language consistent with the change to only permit off-floor transfers. Additionally, the additional circumstances in which the President or

[24] *Id.*

[25] Phlx Rule 1058(c) requires position transfers to occur at the same prices that appear on the books of the transferring member.

[26] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[27] The proposed rule change is similar to CFE Rule 420(c).

[28] This notice provision applies only to transfers involving a Trading Permit Holder's positions and not to positions of Non-Trading Permit Holder parties, as they are not subject to the Rules. In addition, no notice would be required to effect off-floor transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

[29] *See, e.g.,* Phlx Rule 1058(b) and (c); and Arca Rule 6.78–O(d)(2).

[30] *See, e.g.,* Phlx Rule 1058(c); and Arca Rule 6.78–O(c).

[31] Similar to the rules of other exchanges, the proposed rule change also lets a designee of the Exchange president grant an exemption. *See, e.g.,* Arca Rule 6.78–O(f).

a designee may grant an exemption are similar to those that the President or a designee may consider when taking action under emergency conditions pursuant to Rule 6.17.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[32] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [33] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [34] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting the off-floor transfers in very limited circumstances such as where there is no change in beneficial ownership, to contribute to a non-profit corporation, to transfer to a minor or a transfer by operation of law is reasonable to allow a TPH to accomplish certain goals efficiently. The rule permits off-floor transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a TPH that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a TPH that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a TPH may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine off-floor transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which Rule 6.49A was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (e) to Rule 6.49A that the transfer of positions procedures set forth in Rule 6.49A are intended to facilitate non-recurring movements of positions.

The Exchange believes that the proposed rule change to eliminate the on-floor position transfer procedure promotes just and equitable principles of trade, helps remove impediments to and perfect the mechanism of a free and open market and a national market system, and promotes efficient administration of the Exchange, as it eliminates a complex procedure that is of limited use to Trading Permit Holders today but still imposes an administrative burden on the Exchange.

The Exchange believes the proposed rule change benefits investors, as it adds transparency to the Rules by codifying certain long-standing guidance regarding what types of off-floor transfers are permissible. The purpose of the additional circumstances in which market participants may conduct off-floor transfers is consistent with the purpose of the circumstances currently permitted in Rule 6.49A. Therefore, the proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. It also permits presidential exemptions when they are necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and are in the public interest. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change requiring notice and maintenance of records will ensure the Exchange is able to review off-floor transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a–3 and 17a–4 under the Act.

As discussed above, the proposed rule change is similar to rules of other options exchanges, and thus further removes impediments to and perfects the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the amended off-floor transfer procedure will apply to all Trading Permit Holders in the same manner. Use of the off-floor transfer procedure is voluntary, and all Trading Permit Holders may use the procedure to transfer position off the floor as long as the criteria in the proposed rule are satisfied. The current on-floor position transfer procedure is of limited use to Trading Permit Holders today but still imposes an administrative burden on the Exchange. The proposed elimination of the on-floor position transfer promotes efficient administration of the Exchange, as it eliminates this complex procedure that is limited in application. Market participants will still be able to effect transactions on the Exchange pursuant to the normal auction process if an off-floor transfer is not permissible.

The proposed rule change also provides market participants that experience the limited permissible, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants, as they are similar to requirements in the rules of other options exchanges, as discussed above. The Exchange believes these are reasonable requirements that will ensure the Exchange is aware of all off-floor transfers so that it can monitor and review them to determine whether they are effected in accordance with the Rules.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. The proposed off-floor position transfer procedure is not intended to be a competitive trading tool. The Exchange does not believe the proposed changes to the off-floor position transfer procedure are material, as they codify certain longstanding guidance and clarify the procedure. This procedure is

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

[34] *Id.*

of limited application during unique circumstances. Additionally, as discussed above, the proposed rule change in part is similar to rules of other options exchanges. The Exchange believes having similar rules related to off-floor transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their off-floor transfers comply with multiple sets of rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange consents, the Commission will:

A. by order approve or disapprove such 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–CBOE–2018–060 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2018–060. 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–CBOE–2018–060 and should be submitted on or before September 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19060 Filed 8–31–18; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83973; File No. SR–FICC–2017–021]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a Recovery & Wind-Down Plan and Related Rules

August 28, 2018.

On December 18, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2017–021 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] to adopt a recovery and wind-down plan and related rules.[3] The proposed rule change was published for comment in the **Federal Register** on January 8, 2018.[4] 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.[5] On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] On June 25, 2018, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, FICC filed the proposed rule change as advance notice SR–FICC–2017–805 with the Commission 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'') and Rule 19b–4(n)(1)(i) of the Act (''Advance Notice''). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published for comment in the **Federal Register** on January 30, 2018. 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. 12 U.S.C. 5465(e)(1)(H); Securities Exchange Act Release No. 82580 (January 24, 2018), 83 FR 4341 (January 30, 2018) (SR–FICC–2017–805). On April 10, 2018, the Commission required additional information from FICC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, 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. 12 U.S.C. 5465(e)(1)(D); *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.* 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. 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. 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. 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.* 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 Amendment No. 1, shall not take effect until all required regulatory actions are completed.

[4] Securities Exchange Act Release No. 82431 (January 2, 2018), 83 FR 871 (January 8, 2018) (SR–FICC–2017–021).

[5] 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).

[6] Securities Exchange Act Release No. 82913 (March 20, 2018), 83 FR 12997 (March 26, 2018) (SR–FICC–2017–021).

Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change.[7] On June 28, 2018, FICC filed Amendment No. 1 to the proposed rule change to amend and replace in its entirety the proposed rule change as originally submitted on December 18, 2017.[8] The Commission did not receive any comments. This order approves the proposed rule change, as modified by Amendment No. 1 (hereinafter ''Proposed Rule Change'').

I. Description

In the Proposed Rule Change, 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.[9] Each of the proposed rules is 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;[10] 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'');[11] (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[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 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

[7] 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).

[8] 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.

[9] The GSD Rules and the MBSD Rules are referred to collectively herein as the ''Rules.'' Capitalized terms not defined herein are defined in the Rules.

[10] 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.

[11] 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.

[12] 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 22.

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''),[13] (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,[14] 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).[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 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.[17] 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

[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 9.

[16] 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.

[17] *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 9.

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.[18] 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 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.[19] 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[20] (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.[21] 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

[18] 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*.

[19] 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.

[20] 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.

[21] *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 9.

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.[22] 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.[23]

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 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; [24] 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.[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 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.[26] 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.[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 Member default phase, during which FICC may experience stress events or observe early warning indicators that

[22] *See* GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 9. 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).

[23] 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).

[24] 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).

[25] *See supra* note 23 (concerning FICC's liquidity risk management strategy).

[26] *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 9.

[27] *See supra* note 9. 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 13 (concerning the Capital Policy); 17 CFR 240.17Ad–22(e)(15).

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.[28] 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 improve the status of the indicator,[29] 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.[30] 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.

[28] 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 9.

[29] 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.

[30] *See supra* note 9.

(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.[31] 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 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,[32] (b) the Corporate Contribution,[33] 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).[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 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).[36]

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,[37] 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

[31] 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).

[32] *See supra* note 27.

[33] *See supra* note 27.

[34] *See supra* note 9.

[35] *See supra* note 13 (concerning the Capital Policy).

[36] *See supra* note 9.

[37] 11 U.S.C. 101 *et seq.*

(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.[38] 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 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.[39] 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.[40]

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.[41] 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.[42] 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

[38] 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.

[39] *See* 11 U.S.C. *et seq.*

[40] *See* 11 U.S.C. 363.

[41] 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.

[42] *See supra* note 9.

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 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]

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

[43] *See supra* note 13.

[44] *See supra* note 13.

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 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.[45]

(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.[46]

The proposed Wind-down Rule would address other ex-ante matters, including provisions providing that its

[45] 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.

[46] 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.

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 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

Section 19(b)(2)(C) of the Act[47] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful review, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[48] Rules 17Ad–22(e)(2)(i), (iii), and (v) under the Act,[49] Rule 17Ad–22(e)(3)(ii) under the Act,[50] and Rules 17Ad–22(e)(15)(i) and (ii) under the Act.[51]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that a registered clearing agency have rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[52]

First, the Commission believes that the R&W Plan, generally, is designed to help FICC promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible 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, as described above, the Recovery Plan would establish a number of triggers for the potential application of a number of recovery tools described in the Recovery Plan. The Commission believes that establishing such triggers alongside a

[47] 15 U.S.C. 78s(b)(2)(C).

[48] 15 U.S.C. 78q–1(b)(3)(F).

[49] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[50] 17 CFR 240.17Ad–22(e)(3)(ii).

[51] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[52] 15 U.S.C. 78q–1(b)(3)(F).

list of available recovery tools would help 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, as described above, 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 would help FICC improve its ability to identify and manage a force majeure event, and, as needed, to stabilize its financial condition so that FICC can continue to operate.

The Commission believes that the Recovery Plan and the Force Majeure Rule would 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 are designed to help FICC promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible by establishing a means for FICC to best determine the most appropriate way to address such stress situations in an effective manner.

Second, the Commission believes that the R&W Plan, generally, is designed to help FICC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible 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 to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible 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 FICC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.

By better enabling FICC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, as described above, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[53]

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 [54] to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[55] 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 [56] applicable to clearing agencies, and the objectives of owners and participants.[57] 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.[58]

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

[53] 15 U.S.C. 78q–1(b)(3)(F).

[54] 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.

[55] 17 CFR 240.17Ad–22(e)(2)(i).

[56] 15 U.S.C. 78q–1.

[57] 17 CFR 240.17Ad–22(e)(2)(iii).

[58] 17 CFR 240.17Ad–22(e)(2)(v).

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[59] applicable to clearing 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 finds that the R&W Plan is consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v) under the Act.[60]

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.[61]

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.[62] 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.[63] 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[.]''[64] 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.[65] 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.

[59] 15 U.S.C. 78q–1.

[60] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[61] 17 CFR 240.17Ad–22(e)(3)(ii).

[62] 11 U.S.C. 101 *et seq.*

[63] *See, e.g.,* 11 U.S.C. 363, 726, and 1129(a)(7).

[64] *See* 11 U.S.C. 363(f).

[65] 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.

Therefore, the Commission finds that the R&W Plan is consistent with Rule 17Ad–22(e)(3)(ii) under the Act.[66]

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.[67] 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,[68] discussed above.[69]

As discussed above, FICC's Capital Policy is designed to address how FICC holds LNA in compliance with these requirements,[70] 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 finds that the R&W Plan is consistent with Rules 17Ad–22(e)(15)(i) and (ii) under the Act.[71]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[72] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[73] that proposed rule change SR–FICC–2017–021, as modified by Amendment No. 1, be, and it hereby is, approved[74] as of the date of this order or the date of a notice by the Commission authorizing FICC to implement advance notice SR–FICC–2017–805, as modified by Amendment No. 1, whichever is later.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[75]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19055 Filed 8–31–18; 8:45 am]

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[66] 17 CFR 240.17Ad–22(e)(3)(ii).

[67] 17 CFR 240.17Ad–22(e)(15)(i).

[68] 17 CFR 240.17Ad–22(e)(3)(ii).

[69] 17 CFR 240.17Ad–22(e)(15)(ii).

[70] *Supra* note 13.

[71] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[72] 15 U.S.C. 78q–1.

[73] 15 U.S.C. 78s(b)(2).

[74] In approving the Proposed Rule Change, the Commission has considered the Proposed Rule Change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[75] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83969; File No. SR–DTC–2017–022]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Loss Allocation Rules and Make Other Changes

August 28, 2018.

On December 18, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2017–022, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[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 proposed rule change was published for comment in the **Federal Register** on January 8, 2018.[4] On February 8, 2018, the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, DTC filed the proposed rule change as advance notice SR–DTC–2017–804 with the Commission 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'') and Rule 19b–4(n)(1)(i) of the Act (''Advance Notice''). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published for comment in the **Federal Register** on January 30, 2018. 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. 12 U.S.C. 5465(e)(1)(H); Securities Exchange Act Release No. 82582 (January 24, 2018), 83 FR 4297 (January 30, 2018) (SR–DTC–2017–804). On April 10, 2018, the Commission required additional information from DTC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, 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. 12 U.S.C. 5465(e)(1)(D); *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.* 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, which was published in the **Federal Register** on August 6, 2018. Securities Exchange Act Release No. 83746 (July 31, 2018), 83 FR 38357 (August 6, 2018) (SR–DTC–2017–804). 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. 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. 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.* 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. 82426 (January 2, 2018), 83 FR 913 (January 8, 2018) (SR–DTC–2017–022).

designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] 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.[7] On June 28, 2018, DTC filed Amendment No. 1 to the proposed rule change to amend and replace in its entirety the proposed rule change as originally filed on December 18, 2017.[8] The Commission did not receive any comments. This order approves the proposed rule change, as modified by Amendment No. 1 (hereinafter, ''Proposed Rule Change'').

I. Description

The Proposed Rule Change consists of proposed changes to DTC's Rules, By-Laws and Organization Certificate of DTC (''Rules'')[9] in order to (1) modify the application of the Participants Fund; (2) modify the loss allocation process; (3) align DTC's loss allocation rule among 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'');[10] (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 Proposed Rule Change can be found in the Notice of Amendment No. 1.[11]

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;[12] 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[13] or non-default losses that are incident to the business of DTC.[14] For both liquidity[15] 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 that a Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A).[16] 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

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[5] 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).

[6] Securities Exchange Act Release No. 82914 (March 20, 2018), 83 FR 12978 (March 26, 2018) (SR–DTC–2017–022).

[7] 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).

[8] Securities Exchange Act Release No. 83629 (July 13, 2018), 83 FR 34246 (July 19, 2018) (SR–DTC–2017–022) (''Notice of Amendment No. 1''). 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.

[9] 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.*

[10] 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.

[11] *See* Notice of Amendment No. 1, *supra* note 8.

[12] 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.

[13] 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.

[14] 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 9.

[15] 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.

[16] 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 9. 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.''

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'').[17]

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, as DTC states, that, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[18] 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.'' [19] 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 charges. As proposed, Participants would have five Business Days [20] 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.[21] 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.[22]

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

[17] 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).

[18] Rule 4, Section 4(a)(1), *supra* note 9. 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.

[19] 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.

[20] 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.

[21] 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.

[22] 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 9. The alternative limit in clause (b) would be eliminated in proposed Section 8(a) in favor of a single defined standard.

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.[23]

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.[24]

The proposed Corporate Contribution would be defined to be an amount equal to 50 percent of DTC's General Business Risk Capital Requirement.[25] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[26] 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.[27] 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 Business Days in order to permit DTC to replenish the Corporate Contribution.[28] 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.[29]

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

[23] 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.

[24] 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.

[25] 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.

[26] *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).

[27] 17 CFR 240.17Ad–22(e)(15).

[28] 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.

[29] 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.

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.[30]

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.[31] 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.'' [32]

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 [33] 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 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.[34]

(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 [35] 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

[30] 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.

[31] *See supra* note 18.

[32] 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.

[33] 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.

[34] 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.

[35] 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.

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'').[36] 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,[37] 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.[38] 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 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.[39] 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.

[36] The alternative limit in clause (b) would be eliminated in proposed Section 8(b) in favor of a single defined standard.

[37] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[38] 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 9. DTC is proposing to modify the provision to clarify that the termination would be subject to proposed Section 6 of Rule 4.

[39] Typically, a Participant would ultimately submit a notice after having ceased its transactions and transferred all securities out of its Account.

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

Section 19(b)(2)(C) of the Act[40] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful review, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[41] Rule 17Ad–22(e)(4)(viii) under the Act,[42] Rule 17Ad–22(e)(7)(i) under the Act,[43] Rule 17Ad–22(e)(13) under the Act,[44] and Rules 17Ad–22(e)(23)(i) and (ii) under the Act.[45]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that a registered clearing agency have rules designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and to protect investors and the public interest.[46]

The Commission believes that the proposal to clarify the application of Participants Fund would promote the prompt and accurate clearance and settlement of securities transactions. As described above, the proposal would clarify that if a Participant fails to satisfy its obligations, the Participant's Actual Participants Fund Deposit would be used to eliminate any unpaid obligations of that Participant to DTC. 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.

By establishing a more explicit right to use the Participants Fund as a liquidity resource under the above-described circumstances, DTC would have clearer authority to access such funds during stress events, enabling DTC to better manage its liquidity risks and, thus, payment obligations to Participants to help ensure settlement finality. As such, the Commission believes that the proposed change to clarify the application of Participants Fund would better enable DTC to continue to promptly and accurately clear and settle securities transactions during the stress events.

The Commission also believes that the proposal to change the loss allocation process is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. As described above, DTC proposes to make a number of 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

[40] 15 U.S.C. 78s(b)(2)(C).

[41] 15 U.S.C. 78q–1(b)(3)(F).

[42] 17 CFR 240.17Ad–22(e)(4)(viii).

[43] 17 CFR 240.17Ad–22(e)(7)(i).

[44] 17 CFR 240.17Ad–22(e)(13).

[45] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[46] 15 U.S.C. 78q–1(b)(3)(F).

when DTC's Corporate Contribution would be applied to help address a loss, and allow DTC to better anticipate and prepare for potential risk 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. However, 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 heighten operational complexity and, therefore, risk for DTC, since DTC would have to process and track multiple notices while performing its other critical operations during a time of significant stress.

Therefore, the Commission believes that the proposed change to introduce an Event Period would provide a more defined and transparent structure, compared to the current loss allocation process described immediately above, helping to reduce complexity in and the resources needed to effectuate the process, thus mitigating operational risk. Overall, 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 current loss allocation approach laid out in DTC's 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 the notice.

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 these 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 the 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.

Collectively, the Commission believes that the proposed changes to DTC's loss allocation process would provide greater transparency, certainty, and efficiency to DTC regarding the amount of resources and the instances in which DTC would apply the 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 the transparency, certainty, and efficiency would afford DTC better predictability regarding its risk exposure, and in turn, would allow a risk management process at DTC that is more effectively responsive to such events and would improve DTC's ability to continue to operate in a safe and sound manner during such events. Therefore, the Commission believes that these proposed changes would better equip DTC to assure the safeguarding of securities and funds which are in the custody or control of DTC.

The Commission believes that the proposed rule changes to (1) provide additional transparency to Participants with respect to voluntary retirement, and (2) align DTC's loss allocation rules with the loss allocation rules of the other DTCC Clearing Agencies, to the extent practicable and appropriate, are designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. As described above, 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. In addition, the alignment of DTC's loss allocation rules with the other DTCC Clearing Agencies 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, by (1) eliminating uncertainty as to the obligations of retiring Participants to DTC, and (2) removing potential unnecessary complexities and confusion due to different loss allocation rules of the DTCC Clearing Agencies, the Commission believes that the proposal is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that the proposed rule changes to (1) 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, and (2) make conforming and technical changes necessary to harmonize the current Rules with the proposed changes are designed to protect investors and the public interest. First, the Commission believes that the reduction in time to return the deposits 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. Second, the conforming and technical changes are designed to provide clear and coherent Rules concerning loss allocation process to DTC and its Participants. The Commission 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 these two changes are designed to protect investors and public interest by (1) reducing financial risks for DTC's former Participants, and (2) providing clear and coherent Rules to DTC and Participants.

For the reasons above, the Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[47]

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 [48] 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.[49]

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 those 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.[50]

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.[51]

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).[52]

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

[47] 15 U.S.C. 78q–1(b)(3)(F).

[48] 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.

[49] 17 CFR 240.17Ad–22(e)(4)(viii).

[50] *Id.*

[51] 240.17Ad–22(e)(7)(i).

[52] *Id.*

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.[53]

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.[54]

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.[55] 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.[56]

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.

Therefore, the Commission believes that DTC's proposal is consistent with Rules 17Ad–22(e)(23)(i) and (ii) under the Act.[57]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[58] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[59] that proposed rule change SR–DTC–2017–022, as modified by Amendment No. 1, be, and it hereby is, approved[60] as of the date of this order or the date of a notice by the Commission authorizing DTC to implement advance notice SR–DTC–2017–804, as modified by Amendment No. 1, whichever is later.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19061 Filed 8–31–18; 8:45 am]

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[53] 17 CFR 240.17Ad–22(e)(13).

[54] *Id.*

[55] 17 CFR 240.17Ad–22(e)(23)(i).

[56] 17 CFR 240.17Ad–22(e)(23)(ii).

[57] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[58] 15 U.S.C. 78q–1.

[59] 15 U.S.C. 78s(b)(2).

[60] In approving the Proposed Rule Change, the Commission has considered the Proposed Rule Change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83972; File No. SR–DTC–2017–021]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a Recovery & Wind-Down Plan and Related Rules

August 28, 2018.

On December 18, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2017–021 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to adopt a recovery and wind-down plan and related rules.[3] The proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, DTC filed the proposed rule change as advance notice SR–DTC–2017–803 with the Commission 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'') and Rule 19b–4(n)(1)(i) of the Act (''Advance Notice''). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published for comment in the **Federal Register** on January 30, 2018. 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. 12 U.S.C. 5465(e)(1)(H); Securities Exchange Act Release No. 82579 (January 24, 2018), 83 FR 4310 (January 30, 2018) (SR–DTC–2017–803). On April 10, 2018, the Commission required additional information from DTC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, 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. 12 U.S.C. 5465(e)(1)(D); *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.* 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. 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. 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. 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*

change was published for comment in the **Federal Register** on January 8, 2018.[4] 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.[5] On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] 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.[7] On June 28, 2018, DTC filed Amendment No. 1 to the proposed rule change to amend and replace in its entirety the proposed rule change as originally submitted on December 18, 2017.[8] The Commission did not receive any comments. This order approves the proposed rule change, as modified by Amendment No. 1 (hereinafter ''Proposed Rule Change'').

I. Description

In the Proposed Rule Change, DTC proposes to (1) adopt an R&W Plan; and (2) amend the Rules, By-Laws and Organization Certificate of DTC (''Rules'')[9] 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 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'');[10] (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[11] 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

http://www.sec.gov/rules/sro/dtc-an.shtml. 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. 82432 (January 2, 2018), 83 FR 884 (January 8, 2018) (SR–DTC–2017–021).

[5] 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).

[6] Securities Exchange Act Release No. 82912 (March 20, 2018), 83 FR 12999 (March 26, 2018) (SR–DTC–2017–021).

[7] 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).

[8] 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.

[9] Capitalized terms used herein and not otherwise defined herein are defined in the Rules.

[10] 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.

[11] 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 22.

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''),[12] (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,[13] and (iii) the process for the allocation of losses among Participants as provided in Rule 4 (Participants Fund and Participants Investment).[14] 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.[15] 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 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.[16] The

[12] *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).

[13] *See id.*

[14] *See supra* note 9.

[15] 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.

[16] 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.*

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.[17] 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.

[17] 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.

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 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[18] (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.[19] 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.[20] 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[21] and risk management controls, *i.e.,* collateral

[18] The R&W Plan would define an ''Affiliated Family'' of Participants as a number of affiliated entities that are all Participants of DTC.

[19] *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 9. 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 9.

[20] 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).

[21] *See* Rule 4 (Participants Fund and Participants Investment), *supra* note 9.

haircuts, the Collateral Monitor [22] and Net Debit Cap.[23]

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.[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 Participant Default would be imminent. Within the description of this phase, the Recovery Plan would provide that DTC may take targeted, routine risk 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.[25] 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).[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 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.[27] 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.

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[22] *See* Rule 1 (Definitions; Governing Law), Section 1, *supra note* 9. 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).

[23] *Id.*

[24] 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).

[25] *See* Rule 10 (Discretionary Termination); Rule 11 (Mandatory Termination); Rule 12 (Insolvency), *supra* note 9.

[26] *See supra* note 9. 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 12 (concerning the Capital Policy); 17 CFR 240.17Ad–22(e)(15).

[27] 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 9.

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,[28] 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).[29] 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 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.[30] 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

[28] 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.

[29] *See supra* note 9.

[30] 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).

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,[31] (b) the Corporate Contribution,[32] 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).[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 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).[35]

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 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,[36] 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.[37] 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.

[31] *See supra* note 26.

[32] *See supra* note 26.

[33] *See supra* note 9.

[34] *See supra* note 12 (concerning the Capital Policy).

[35] *See supra* note 9.

[36] 11 U.S.C. 101 *et seq.*

[37] 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.

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 [38] 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.[39] 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.[40]

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. 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.[41]

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/

[38] 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.

[39] 11 U.S.C. 101 *et seq.*

[40] *See* 11 U.S.C. 363.

[41] 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.

Wind-down Capital Requirement under the Capital Policy.[42] 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.[43]

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.

(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

[42] *See supra* note 12.

[43] *See supra* note 12.

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.[44]

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

[44] 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.

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.

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

Section 19(b)(2)(C) of the Act[45] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful review, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[46] Rules 17Ad–22(e)(2)(i), (iii), and (v) under the Act,[47] Rule 17Ad–22(e)(3)(ii) under the Act,[48] and Rules 17Ad–22(e)(15)(i) and (ii) under the Act.[49]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that a registered clearing agency have rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[50]

First, the Commission believes that the R&W Plan, generally, is designed to help DTC promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible 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, as described above, the Recovery Plan would establish a number of triggers for the potential application of a number of recovery tools described in the Recovery Plan. The Commission believes that establishing such triggers alongside a list of available recovery tools would help 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, as described above, 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 would help DTC improve its ability to identify and manage a force majeure event, and, as needed, to stabilize its financial condition so that DTC can continue to operate.

The Commission believes that the Recovery Plan and the Force Majeure Rule would 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

[45] 15 U.S.C. 78s(b)(2)(C).

[46] 15 U.S.C. 78q–1(b)(3)(F).

[47] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[48] 17 CFR 240.17Ad–22(e)(3)(ii).

[49] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[50] 15 U.S.C. 78q–1(b)(3)(F).

Commission believes that the Recovery Plan and the Force Majeure Rule are designed to help DTC promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible by establishing a means for DTC to best determine the most appropriate way to address such stress situations in an effective manner.

Second, the Commission believes that the R&W Plan, generally, is designed to help DTC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible 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 to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible in the event the Wind-down Plan is implemented.

By better enabling DTC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, as described above, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[51]

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 [52] to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[53] 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 [54] applicable to clearing agencies, and the objectives of owners and participants.[55] 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.[56]

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 [57] 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 finds that the R&W Plan is consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v) under the Act.[58]

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

[51] 15 U.S.C. 78q–1(b)(3)(F).

[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)–(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)(2)(i).

[54] 15 U.S.C. 78q–1.

[55] 17 CFR 240.17Ad–22(e)(2)(iii).

[56] 17 CFR 240.17Ad–22(e)(2)(v).

[57] 15 U.S.C. 78q–1.

[58] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

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.[59]

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 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.[60] 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.[61] 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[.]''[62] 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.[63] 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 finds that the R&W Plan is consistent with Rule 17Ad–22(e)(3)(ii) under the Act.[64]

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.[65] 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,[66] discussed above.[67]

As discussed above, DTC's Capital Policy is designed to address how DTC holds LNA in compliance with these requirements,[68] 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

[59] 17 CFR 240.17Ad–22(e)(3)(ii).

[60] 11 U.S.C. 101 *et seq.*

[61] *See, e.g.,* 11 U.S.C. 363, 726, and 1129(a)(7).

[62] *See* 11 U.S.C. 363(f).

[63] 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.

[64] 17 CFR 240.17Ad–22(e)(3)(ii).

[65] 17 CFR 240.17Ad–22(e)(15)(i).

[66] 17 CFR 240.17Ad–22(e)(3)(ii).

[67] 17 CFR 240.17Ad–22(e)(15)(ii).

[68] *Supra* note 12.

which is this Recovery/Wind-down Capital Requirement. Therefore, the Commission finds that the R&W Plan is consistent with Rules 17Ad–22(e)(15)(i) and (ii) under the Act.[69]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[70] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[71] that proposed rule change SR–DTC–2017–021, as modified by Amendment No. 1, be, and it hereby is, approved[72] as of the date of this order or the date of a notice by the Commission authorizing DTC to implement advance notice SR–DTC–2017–803, as modified by Amendment No. 1, whichever is later.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[73]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19054 Filed 8–31–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83971; File No. SR–NSCC–2017–018]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Loss Allocation Rules and Make Other Changes

August 28, 2018.

On December 18, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2017–018 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to amend its loss allocation rules and make other conforming and technical changes.[3] The proposed rule change was published for comment in the **Federal Register** on January 8, 2018.[4] 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.[5] On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] 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.[7] On June 28, 2018, NSCC filed Amendment No. 1 to the proposed rule change to amend and replace in its entirety the proposed rule change as originally filed on December 18, 2017.[8] The Commission did not receive any comments. This order approves the proposed rule change, as modified by Amendment No. 1 (hereinafter, ''Proposed Rule Change'').

I. Description

The Proposed Rule Change consists of proposed changes to NSCC's Rules and Procedures (''Rules'')[9] in order to (1) modify the loss allocation process; (2) align NSCC's loss allocation rule among 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'');[10] (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

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[69] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[70] 15 U.S.C. 78q–1.

[71] 15 U.S.C. 78s(b)(2).

[72] In approving the Proposed Rule Change, the Commission has considered the Proposed Rule Change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[73] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, NSCC filed the proposed rule change as advance notice SR–NSCC–2017–806 with the Commission 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'') and Rule 19b–4(n)(1)(i) of the Act (''Advance Notice''). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published for comment in the **Federal Register** on January 30, 2018. 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. 12 U.S.C. 5465(e)(1)(H); Securities Exchange Act Release No. 82584 (January 24, 2018), 83 FR 4377 (January 30, 2018) (SR–NSCC–2017–806). On April 10, 2018, the Commission required additional information from NSCC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, 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. 12 U.S.C. 5465(e)(1)(D); *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.* 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, which was published in the **Federal Register** on August 6, 2018. Securities Exchange Act Release No. 83748 (July 31, 2018), 83 FR 38375 (August 6, 2018) (SR–NSCC–2017–806). 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. 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. 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.* 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. 82428 (January 2, 2018), 83 FR 897 (January 8, 2018) (SR–NSCC–2017–018).

[5] 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).

[6] Securities Exchange Act Release No. 82910 (March 20, 2018), 83 FR 12968 (March 26, 2018) (SR–NSCC–2017–018).

[7] 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).

[8] Securities Exchange Act Release No. 83633 (July 13, 2018), 83 FR 34227 (July 19, 2018) (SR–NSCC–2017–018) (''Notice of Amendment No. 1''). 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-an.htm* since June 29, 2018.

[9] 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.*

[10] 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.[11]

A. Changes to the Loss Allocation Process

NSCC's loss allocation rules currently provide that in the event NSCC ceases to act [12] 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.[13]

NSCC's General Business Risk Capital Requirement, as defined in NSCC's Clearing Agency Policy on Capital Requirements,[14] 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.[15] 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.[16]

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.[17] 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

[11] *See* Notice of Amendment No. 1, *supra* note 8.

[12] 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 9.

[13] 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.

[14] *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).

[15] 17 CFR 240.17Ad–22(e)(15).

[16] 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.

[17] 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.[18]

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.[19]

(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.[20] 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.[21]

(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.[22] 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[23] 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

[18] 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.

[19] 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.

[20] 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 9. 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.

[21] 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.

[22] NSCC states that its current loss allocation rules pre-date NSCC's move to a risk-based margining methodology.

[23] 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.[24] 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);[25] (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;[26] however, its aggregate obligation would be limited to the amount of its Loss Allocation Cap as fixed in the round for which it withdrew.[27] 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.[28] The Rules currently permit NSCC to apply the Clearing Fund to non-default losses. Specifically, pursuant to Section 2(b) of Rule 4,[29] 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.

[24] 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.

[25] 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.

[26] 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 9.

[27] If a Member's Loss Allocation Cap exceeds the Member's then-current Required Fund Deposit, it must still cover the excess amount.

[28] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[29] 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 9.

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 replaced 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

Section 19(b)(2)(C) of the Act [30] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful review, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[31] Rule 17Ad–22(e)(4)(viii) under the Act,[32] Rule 17Ad–22(e)(13) under the Act,[33] and Rules 17Ad–22(e)(23)(i) and (ii) under the Act.[34]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that a registered clearing agency have rules designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and to protect investors and the public interest.[35]

The Commission believes that the proposal to change the loss allocation process is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. As described above, NSCC proposes to make a number of changes to its loss allocation process as described above. First, NSCC would modify the calculation of its Corporate Contribution to apply a mandatory fixed percentage of its General Business Risk Capital Requirement as compared to the current Rules that 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 risk 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 initiate its current loss allocation process by applying its retained earnings and allocating losses. However, 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 heighten operational complexity and, therefore, risk for NSCC, since NSCC would have to process and track multiple notices while performing its other critical operations during a time of significant stress.

[30] 15 U.S.C. 78s(b)(2)(C).

[31] 15 U.S.C. 78q–1(b)(3)(F).

[32] 17 CFR 240.17Ad–22(e)(4)(viii).

[33] 17 CFR 240.17Ad–22(e)(13).

[34] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[35] 15 U.S.C. 78q–1(b)(3)(F).

Therefore, the Commission believes that the proposed change to introduce an Event Period would provide a more defined and transparent structure, compared to the current loss allocation process described immediately above, helping to reduce complexity in and the resources needed to effectuate the process, thus mitigating operational risk. Overall, 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 current loss allocation approach laid out in NSCC's 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 the 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 the notice.

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 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 these 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 the 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.

Collectively, the Commission believes that the proposed changes to NSCC's loss allocation process would provide greater transparency, certainty, and efficiency to NSCC regarding the amount of resources and the instances in which NSCC would apply the 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 the transparency, certainty, and efficiency would afford NSCC better predictability regarding its risk exposure, and in turn, would allow a risk management process at NSCC that is more effectively responsive to such events and would improve NSCC's ability to continue to operate in a safe and sound manner during such events. Therefore, the Commission believes that these proposed changes would better equip NSCC to assure the safeguarding of securities and funds which are in the custody or control of NSCC.

In addition, the Commission believes that the proposed rule changes to align NSCC's loss allocation rules with the loss allocation rules of the other DTCC Clearing Agencies, to the extent practicable and appropriate, are designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. As described above, the alignment of NSCC's loss allocation rules with the other NSCC Clearing Agencies 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, by removing potential unnecessary complexities and confusion due to different loss allocation rules of the DTCC Clearing Agencies, the Commission believes that the proposal is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

Finally, the Commission believes that the proposed rule change to (1) 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, and (2) make conforming and technical changes necessary to harmonize the current Rules with the proposed changes are designed to protect investors and the public interest. First,

the Commission believes that the reduction in time to return the deposits 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. Second, the conforming and technical changes are designed to provide clear and coherent Rules concerning loss allocation process to NSCC and its Members. The Commission 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 these two changes are designed to protect investors and the public interest by (1) reducing financial risks for NSCC's former Members, and (2) providing clear and coherent Rules to NSCC and Members.

For the reasons above, the Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[36]

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 [37] 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.[38]

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 those 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.[39]

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.[40]

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.[41]

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.[42] 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.[43]

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 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

[36] 15 U.S.C. 78q–1(b)(3)(F).

[37] 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.

[38] 17 CFR 240.17Ad–22(e)(4)(viii).

[39] *Id.*

[40] 17 CFR 240.17Ad–22(e)(13).

[41] *Id.*

[42] 17 CFR 240.17Ad–22(e)(23)(i).

[43] 17 CFR 240.17Ad–22(e)(23)(ii).

Rules 17Ad–22(e)(23)(i) and (ii) under the Act.[44]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[45] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that proposed rule change SR–NSCC–2017–018, as modified by Amendment No. 1, be, and it hereby is, approved[47] as of the date of this order or the date of a notice by the Commission authorizing NSCC to implement advance notice SR–NSCC–2017–806, as modified by Amendment No. 1, whichever is later.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83967; File No. SR–NYSEARCA–2018–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31–E Relating To Reserve Orders, To Re-Name Two Order Types, and To Delete Inoperative Rule Text

August 28, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 15, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amend Rule 7.31–E relating to Reserve Orders, to re-name two order types, and to delete inoperative rule text. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31–E relating to Reserve Orders, to re-name two order types, and to delete inoperative rule text.

Background

Rule 7.31–E(d)(1) defines a Reserve Order as a Limit or Inside Limit Order with a quantity of the size displayed and with a reserve quantity of the size (''reserve interest'') that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders and the reserve interest is ranked Priority 3—Non-Display Orders.[4] Rule 7.31–E(d)(1)(A) provides that on entry, the display quantity of a Reserve Order must be entered in round lots and the displayed portion of a Reserve Order will be replenished following any execution. That rule further provides that the Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order. Rule 7.31–E(d)(1)(B) provides that each time a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity of the Reserve Order, while the reserve interest retains the working time of original order entry. Pursuant to Rule 7.31–E(d)(1)(C), a Reserve Order must be designated Day and may be combined with an Arca Only Order or a Primary Pegged Order.

Rule 7.31–E(d)(2) defines a ''Limit Non-Displayed Order,'' which is a Limit Order that is not displayed and does not route. Rule 7.31–E(e)(1) defines an ''Arca Only Order,'' which is a Limit Order that does not route.

Proposed Rule Change Relating to Order Type Names

The Exchange proposes non-substantive amendments to Rules 7.31–E and 7.46–E to re-name the ''Arca Only Order'' as the ''Non-Routable Limit Order.'' This proposed rule change is based on the term used by the Exchange's affiliate, NYSE American LLC (''NYSE American'') for the same order type.

The Exchange also proposes non-substantive amendments to Rules 7.31–E and 7.46–E to re-name the ''Limit Non-Displayed Order'' as the ''Non-Displayed Limit Order.'' The Exchange believes that this proposed rule change would conform the style of this order type with the name ''Non-Routable Limit Order.'' The Exchange therefore believes that this proposed rule change would promote clarity and consistency in its rules.

Proposed Rule Change Relating to Reserve Orders

The Exchange proposes to amend Rule 7.31–E(d)(1) to change the manner by which the display portion of a Reserve Order would be replenished. As proposed, rather than replenishing the display quantity following any execution, the Exchange proposes to replenish the Reserve Order when the display quantity is decremented to below a round lot. The changes that the Exchange is proposing to Rule 7.31 relating to Reserve Orders (and Primary Pegged Orders) are identical to changes that were recently approved for the Exchange's affiliate, New York Stock Exchange LLC (''NYSE'').[5] In addition, the proposed changes to how Reserve Orders would be replenished are consistent with how Reserve Orders are replenished on other equity exchanges.[6]

[44] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[45] 15 U.S.C. 78q–1.

[46] 15 U.S.C. 78s(b)(2).

[47] In approving the Proposed Rule Change, the Commission has considered the Proposed Rule Change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[48] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The terms ''Priority 2—Display Orders'' and ''Priority 3—Non-Display Orders'' are defined in Rule 7.36–E(e).

[5] *See* Securities Exchange Act Release No. 83768 (August 3, 2018), 83 FR 39488 (August 9, 2018) (SR–NYSE–2018–26) (Approval Order).

[6] *See* Cboe BZX Exchange, Inc. (''BZX'') Rule 11.9(c)(1); Nasdaq Stock Market LLC (''Nasdaq'') Rule 7503(h).

As is currently the case, the replenish quantity would be the minimum display size of the order or the remaining quantity of reserve interest if it is less than the minimum display quantity. To reflect this functionality, the Exchange proposes that Rule 7.31–E(d)(1)(A) would be amended as follows (deleted text bracketed; new text italic):

(A) On entry, the display quantity of a Reserve Order must be entered in round lots. The displayed portion of a Reserve Order will be replenished *when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display quantity of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity* [following any execution. The Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order].

Under current functionality, because the replenished quantity is assigned a new working time, it is feasible for a single Reserve Order to have multiple replenished quantities with separate working times, each, a ''child'' order. The proposed change to limit when a Reserve Order would be replenished to when the display quantity is decremented to below a round lot only would reduce the number of child orders for a Reserve Order. The Exchange believes that minimizing the number of child orders for a Reserve Order would reduce the potential for market participants to detect that a child order displayed on the Exchange's proprietary market data feeds is associated with a Reserve Order.

In most cases, the maximum number of child orders for a Reserve Order would be two. For example, assume a Reserve Order to buy has a display quantity of 100 shares and an additional 200 shares of reserve interest. A sell order of 50 shares would trade with the display quantity of such Reserve Order, which would decrement the display quantity to 50 shares. As proposed, the Exchange would then replenish the Reserve Order with 100 shares from the reserve interest, *i.e.,* the minimum display size for the order. After this second replenishment, the Reserve Order would have two child orders, one for 50 shares, the other for 100 shares, each with different working times.

Generally, when there are two child orders, the older child order of less than a round lot will be executed before the second child order. However, there are limited circumstances when a Reserve Order could have two child orders that equal less than a round lot, which, as proposed, would trigger a replenishment. For such circumstance, the Exchange proposes that when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time would be reassigned the new working time assigned to the next replenished quantity.

For example, taking the same Reserve Order as above:

- If 100 shares of such order (''A'') are routed on arrival, it would have a display quantity of 100 shares (''B'') and 100 shares in reserve interest.
- While ''A'' is routed, a sell order of 50 shares would trade with ''B,'' decrementing ''B'' to 50 shares and the Reserve Order would be replenished from reserve interest, creating a second child order ''C'' of 100 shares.
- Next, the Exchange receives a request to reduce the size of the Reserve Order from 300 shares to 230 shares. Because ''A'' is still routed away and there is no reserve interest, and as described in more detail below, this 70 share reduction in size would be applied against the most recent child order of ''C,'' which would be reduced to 30 shares. Together with ''B,'' which would still be 50 shares, the two displayed child orders would equal less than a round lot, but with no quantity in reserve interest.
- Next, ''A'' is returned unexecuted, and as described below, becomes reserve interest and is evaluated for replenishment. Because the total display quantity (''B'' + ''C'') is less than a round lot, this Reserve Order would be replenished. But because the Reserve Order already has two child orders, the child order with the later working time, ''C,'' would be returned to the reserve interest, which would now have a quantity of 130 shares (''C'' + ''A''), and the Reserve Order would be replenished with 100 shares from the reserve interest with a new working time, which would be a new child order ''D.''
- After this replenishment, this Reserve Order would have two child orders of ''B'' for 50 shares and ''D'' for 100 shares, and a reserve interest of 30 shares.

To effect these changes, the Exchange proposes to amend current Rule 7.31–E(d)(1)(B) to specify that each display quantity of a Reserve Order with a different working time would be referred to as a child order. The Exchange further proposes new Rule 7.31–E(d)(1)(B)(i) that would provide that when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time would rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity.

The Exchange also proposes new Rule 7.31–E(d)(1)(B)(ii) to provide that if a Reserve Order is not routable (*i.e.,* is combined with either a Non-Routable Limit Order or a Primary Pegged Order), the replenish quantity would be assigned a display and working price consistent with the instructions for the order, which represents current functionality. For example, for a Non-Routable Limit Reserve Order, if the display price would lock or cross the contra-side PBBO, the replenished quantity would be assigned a display price one MPV worse than the PBBO and a working price equal to the contra-side PBBO, as provided for in Rule 7.31–E(e)(1)(A)(i).[7] The Exchange believes that this proposed rule text would provide transparency and clarity to Exchange rules.

For a Primary Pegged Reserve Order, the Exchange proposes that the replenished quantity would follow Rule 7.31–E(h)(2)(B), which provides that a Primary Pegged Order would be rejected if the PBBO is locked or crossed. Because a Primary Pegged Reserve Order would have resting reserve interest, the Exchange proposes to amend Rule 7.31–E(h)(2)(B) to provide that if the PBBO is locked or crossed when the display quantity of a Primary Pegged Reserve Order is replenished, the entire order would be cancelled. The Exchange believes that cancelling the entire order is consistent with the current rule that provides that the entire order would be rejected on arrival if the display quantity would lock or cross the PBBO.

The Exchange further proposes to add new subsection (D) to Rule 7.31–E(d)(1) to describe when a Reserve Order would be routed. As proposed, a routable Reserve Order would be evaluated for routing both on arrival and each time the display quantity is replenished.

Proposed Rule 7.31–E(d)(1)(D)(i) would provide that if routing is required, the Exchange would route from reserve interest before publishing the display quantity. In addition, if after routing, there is less than a round lot available to display, the Exchange would wait until the routed quantity returns (executed or unexecuted) before publishing the display quantity. In the example described above, the Exchange would have published the display quantity before the routed quantity returned because the display quantity was at least a round lot. If, however, 250

[7] The term ''PBBO'' is defined in Rule 1.1. The term ''MPV'' is defined in Rule 7.6–E.

shares of a Reserve Order of 300 shares had been routed on arrival, because the unrouted quantity was less than a round lot (50 shares), the Exchange would wait for the routed quantity to return, either executed or unexecuted, before publishing the display quantity.

The Exchange proposes this functionality to reduce the possibility for a Reserve Order to have more than one child order. If the Exchange did not wait, and instead displayed the 50 shares when the balance of the Reserve Order has routed, if the 250 shares returns unexecuted, such Reserve Order would be replenished and would have two child orders—one for the 50 shares that was displayed when the order was entered and a second for the 100 shares that replenished the Reserve Order from the quantity that returned unexecuted. By contrast, by waiting for a report on the routed quantity, if the routed quantity was not executed, the Exchange would display the minimum display quantity as a single child order. If the routed quantity was executed, the Exchange would display the 50 shares, but only because that would be the full remaining quantity of the Reserve Order.

Proposed Rule 7.31–E(d)(1)(D)(ii) would provide that any quantity of a Reserve Order that is returned unexecuted would join the working time of the reserve interest, which is current functionality. If there is no quantity of reserve interest to join, the returned quantity would be assigned a new working time as reserve interest. As further proposed, in either case, such reserve interest would replenish the display quantity as provided for in Rules 7.31(d)(1)(A) and (B). The Exchange believes that this proposed rule text would promote transparency and clarity in Exchange rules. The Exchange further believes it is appropriate for a returned quantity of a Reserve Order to join the reserve interest first because the order may not be eligible for a replenishment to the display quantity.

Proposed Rule 7.31–E(d)(1)(E) would provide that a request to reduce in size a Reserve Order would cancel the reserve interest before canceling the display quantity and if there is more than one child order, the child order with the later working time would be cancelled first. This represents current functionality and the example set forth above demonstrates how this would function. The Exchange believes that canceling reserve interest before a child order would promote the display of liquidity on an exchange. The Exchange further believes that canceling a later-timed child order would respect the time priority of the first child order, and any priority such child order may have for allocations.

Additional Proposed Rule Changes

The Exchange proposes additional non-substantive amendments to its rules to remove inoperative rule text.

First, the Exchange proposes to amend Rule 7.35–E (Auctions) to remove Commentary .02, which sets forth rules that were operative no later than February 28, 2018. Because the amendments described in that Commentary .02 have been implemented, Commentary .02 is now moot and can be deleted.[8]

Second, the Exchange proposes to amend Rule 7.39–E (Adjustment of Open Orders) to delete the title and text of the rule and designate the rule ''Reserved.'' Rule 7.39–E relates to the adjustment of open orders, *i.e.,* orders with a Good Till Cancelled (''GTC'') or Good Till Date (''GTD'') time-in-force modifier. On Pillar, the Exchange does not offer GTC or GTD time-in-force modifiers.[9] When the Exchange deleted its pre-Pillar order type rules, it inadvertently did not delete Rule 7.39–E.[10] Because this rule is now inoperative, the Exchange proposes to delete it as moot.

* * * * *

Because of the technology changes associated with the proposed rule changes relating to Reserve Orders, the Exchange will announce by Trader Update when these changes will be implemented, which the Exchange anticipates will be in the third quarter of 2018.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change to replenish a Reserve Order only if the display quantity is decremented to below a round lot would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would reduce the number of child orders associated with a single Reserve Order. By reducing the number of child orders, the Exchange believes it would reduce the potential for market participants to detect that a child order is associated with a Reserve Order. The proposed changes to Reserve Orders and Primary Pegged Orders are identical to recently approved changes to the rules of its affiliated exchange, NYSE, and how a Reserve Order would be replenished is also consistent with how Reserve Orders function on BZX and Nasdaq.[13]

For similar reasons, the Exchange believes that if a Reserve Order has two child orders that equal less than a round lot, it would remove impediments to and perfect the mechanism of a free and open market and a national market system to assign a new working time to the later child order so that when such Reserve Order is replenished, it would have a maximum of only two child orders. The Exchange believes that this proposed change would streamline the operation of Reserve Orders and meet the objective to reduce the potential for market participants to be able to identify that a child order is associated with a Reserve Order.

The Exchange further believes that the proposed rule change to evaluate a Reserve Order for routing both on arrival and when replenishing would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would reduce the potential for the display quantity of a Reserve Order to lock or cross the PBBO of an away market. The Exchange further believes that routing from reserve interest would promote the display of liquidity on the Exchange, because if there is at least a round lot remaining of a Reserve Order that is not routed, the Exchange would display that quantity. The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to wait to display a Reserve Order if there is less than a round lot remaining after routing

[8] *See* Securities Exchange Act Release No. 82140 (November 21, 2017), 82 FR 56304 (November 28, 2017) (SR–NYSEArca–2017–133) (Notice of filing and immediate effectiveness of proposed rule change to add temporary rule).

[9] *See* Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR–NYSEArca–2015–56) (Approval Order).

[10] *See* Securities Exchange Act Release No. 79078 (October 11, 2016), 81 FR 71559 (October 17, 2017) (SR–NYSEArca–2016–135) (Notice of filing and immediate effectiveness).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* notes 5 and 6.

because it would reduce the potential for such Reserve Order to have more than one child order. Finally, the Exchange believes that joining any quantity of a Reserve Order that is returned unexecuted with reserve interest first would be consistent with the proposed replenishment logic that a Reserve Order would be replenished only if the display quantity is decremented to below a round lot.

The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to apply a request to reduce in size a Reserve Order to the reserve interest first, and then next to the child order with the later working time, because such functionality would promote the display of liquidity on the Exchange and honor the priority of the first child order with the earlier working time. The Exchange believes that including this existing functionality in Rule 7.31–E would promote transparency and clarity in Exchange rules.

The Exchange believes that the proposed change to Primary Pegged Reserve Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because similar to how a Primary Pegged Order would function on arrival, if the replenish quantity of a Primary Pegged Reserve Order would lock or cross the PBBO, the entire Reserve Order would be cancelled. The Exchange believes that by cancelling the entire order, the Exchange would reduce the potential for such order to be displayed at a price that would lock or cross the PBBO.

The Exchange believes that the proposed non-substantive amendments to rename the ''Limit Non-Displayed Order'' as the ''Non-Displayed Limit Order'' and to rename the ''Arca Only Order'' as the ''Non-Routable Limit Order'' would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to promote clarity and consistency in Exchange rules by moving the modifier describing the function of the order type before the term ''Limit Order'' and using order type names that are used on NYSE American.

Finally, the Exchange believes that removing inoperative rule text would remove impediments to and perfect the mechanism of a free and open market and a national market system because these proposed rule changes would promote clarity in Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues. Rather, the proposed rule change to Reserve Orders is designed to reduce the potential for market participants to identify that a child order is related to a Reserve Order. The additional proposed rule changes are non-substantive and are designed to promote clarity and consistency in Exchange rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) Impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2018–61 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–2018–61. 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

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 15 U.S.C. 78s(b)(2)(B).

submissions should refer to File Number SR–NYSEArca–2018–61 and should be submitted on or before September 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19059 Filed 8–31–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83974; File No. SR–NSCC–2017–017]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a Recovery & Wind-Down Plan and Related Rules

August 28, 2018.

On December 18, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2017–017 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to adopt a recovery and wind-down plan and related rules.[3] The proposed rule change was published for comment in the **Federal Register** on January 8, 2018.[4] 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.[5] On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] 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.[7] On June 28, 2018, NSCC filed Amendment No. 1 to the proposed rule change to amend and replace in its entirety the proposed rule change as originally submitted on December 18, 2017.[8] The Commission did not receive any comments. This order approves the proposed rule change, as modified by Amendment No. 1 (hereinafter ''Proposed Rule Change'').

I. Description

In the Advance Notice, NSCC proposes to (1) adopt an R&W Plan; (2) amend NSCC's Rules & Procedures (''Rules'')[9] 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 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

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, NSCC filed the proposed rule change as advance notice SR–NSCC–2017–805 with the Commission 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'') and Rule 19b–4(n)(1)(i) of the Act (''Advance Notice''). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published for comment in the **Federal Register** on January 30, 2018. 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. 12 U.S.C. 5465(e)(1)(H); Securities Exchange Act Release No. 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR–NSCC–2017–805). On April 10, 2018, the Commission required additional information from NSCC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, 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. 12 U.S.C. 5465(e)(1)(D); *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.* 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. 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. 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. 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.* 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. 82430 (January 2, 2018), 83 FR 841 (January 8, 2018) (SR–NSCC–2017–017).

[5] 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).

[6] Securities Exchange Act Release No. 82908 (March 20, 2018), 83 FR 12986 (March 26, 2018) (SR–NSCC–2017–017).

[7] 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).

[8] 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.

[9] Capitalized terms used herein and not otherwise defined herein are defined in the Rules.

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'');[10] (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[11] 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''),[12] (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,[13] and (iii) the process for the allocation of losses among Members, as provided in Rule 4 (Clearing Fund).[14] 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.[15] 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 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

[10] 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.

[11] 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 20.

[12] *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).

[13] *See id.*

[14] *See supra* note 9.

[15] 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.

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.[16] 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.[17] 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 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,

[16] 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.*

[17] 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.

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 [18] (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.[19] 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.[20] 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.[21]

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; [22] 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.[23]

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.[24] 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 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

[18] The R&W Plan would define an Affiliated Family of Members as a number of affiliated entities that are all Members of NSCC.

[19] *See* Rule 46 (Restrictions on Access to Services), *supra* note 9.

[20] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), *supra* note 9. 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).

[21] 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).

[22] 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).

[23] *See supra* note 21 (concerning NSCC's liquidity risk management strategy).

[24] *See* Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) and Rule 46 (Restrictions on Access to Services), *supra* note 9.

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).[25]

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.[26] 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,[27] 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).[28] 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 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

[25] 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 12 (concerning the Capital Policy); 17 CFR 240.17Ad–22(e)(15).

[26] 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 9.

[27] 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.

[28] *See supra* note 9.

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.[29] 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,[30] (b) the Corporate Contribution,[31] 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).[32]

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.[33] 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).[34]

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.

(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

[29] 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).

[30] *See supra* note 25.

[31] *See supra* note 25.

[32] *See supra* note 9.

[33] *See supra* note 12 (concerning the Capital Policy).

[34] *See supra* note 9.

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,[35] 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.[36] 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.[37] 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.[38]

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.[39] 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 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

[35] 11 U.S.C. 101 *et seq.*

[36] 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.

[37] *See* 11 U.S.C. 101 *et seq.*

[38] *See* 11 U.S.C. 363.

[39] 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.

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.[40] 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.[41]

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[42] 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[43] 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 (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

[40] *See supra* note 12.

[41] *See supra* note 12.

[42] *See* Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), *supra* note 9.

[43] 12 U.S.C. 5381 *et seq.*

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'').[44]

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, (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

[44] 12 U.S.C. 1811 *et seq.*

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.[45]

(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.[46]

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 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.

[45] 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.

[46] 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.

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

Section 19(b)(2)(C) of the Act [47] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful review, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[48] Rules 17Ad–22(e)(2)(i), (iii), and (v) under the Act,[49] Rule 17Ad–22(e)(3)(ii) under the Act,[50] and Rules 17Ad–22(e)(15)(i) and (ii) under the Act.[51]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that a registered clearing agency have rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[52]

First, the Commission believes that the R&W Plan, generally, is designed to help NSCC promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible 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, as described above, the Recovery Plan would establish a number of triggers for the potential application of a number of recovery tools described in the Recovery Plan. The Commission believes that establishing such triggers alongside a list of available recovery tools would help 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, as described above, 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 would help NSCC improve its ability to identify and manage a force majeure event, and, as needed, to stabilize its financial condition so that NSCC can continue to operate.

The Commission believes that the Recovery Plan and the Force Majeure Rule would 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 are designed to help NSCC promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible by establishing a means for NSCC to best determine the most appropriate way to address such stress situations in an effective manner.

Second, the Commission believes that the R&W Plan, generally, is designed to help NSCC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible 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 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 to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible 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

[47] 15 U.S.C. 78s(b)(2)(C).

[48] 15 U.S.C. 78q–1(b)(3)(F).

[49] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[50] 17 CFR 240.17Ad–22(e)(3)(ii).

[51] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[52] 15 U.S.C. 78q–1(b)(3)(F).

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 NSCC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

By better enabling NSCC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, as described above, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[53]

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 [54] to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[55] 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 [56] applicable to clearing agencies, and the objectives of owners and participants.[57] 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.[58]

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 [59] 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 finds that the R&W Plan is consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v) under the Act.[60]

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.[61]

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 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,

[53] 15 U.S.C. 78q–1(b)(3)(F).

[54] 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.

[55] 17 CFR 240.17Ad–22(e)(2)(i).

[56] 15 U.S.C. 78q–1.

[57] 17 CFR 240.17Ad–22(e)(2)(iii).

[58] 17 CFR 240.17Ad–22(e)(2)(v).

[59] 15 U.S.C. 78q–1.

[60] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[61] 17 CFR 240.17Ad–22(e)(3)(ii).

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.[62] 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.[63] 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[.]''[64] 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.[65] 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 finds that the R&W Plan is consistent with Rule 17Ad–22(e)(3)(ii) under the Act.[66]

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.[67] 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,[68] discussed above.[69]

As discussed above, NSCC's Capital Policy is designed to address how NSCC holds LNA in compliance with these requirements,[70] 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 finds that the R&W Plan is consistent with Rules 17Ad–22(e)(15)(i) and (ii) under the Act.[71]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[72] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[73] that proposed rule change SR–NSCC–2017–017, as modified by Amendment No. 1, be, and it hereby is, approved[74] as of the date of this order or the date of a notice by the Commission authorizing NSCC to implement advance notice SR–NSCC–2017–805, as modified by Amendment No. 1, whichever is later.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[75]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19056 Filed 8–31–18; 8:45 am]

BILLING CODE 8011–01–P

[62] 11 U.S.C. 101 *et seq.*

[63] *See, e.g.,* 11 U.S.C. 363, 726, and 1129(a)(7).

[64] *See* 11 U.S.C. 363(f).

[65] 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.

[66] 17 CFR 240.17Ad–22(e)(3)(ii).

[67] 17 CFR 240.17Ad–22(e)(15)(i).

[68] 17 CFR 240.17Ad–22(e)(3)(ii).

[69] 17 CFR 240.17Ad–22(e)(15)(ii).

[70] *Supra* note 12.

[71] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[72] 15 U.S.C. 78q–1.

[73] 15 U.S.C. 78s(b)(2).

[74] In approving the Proposed Rule Change, the Commission has considered the Proposed Rule Change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[75] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15663; California Disaster Number CA–00293 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 08/24/2018.

Incident: Cranston Fire.

Incident Period: 07/25/2018 through 08/15/2018.

DATES: Issued on 08/24/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/24/2019.

ADDRESS: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Riverside

Contiguous Counties:

California: Imperial, Orange, San Bernardino, San Diego.

Arizona: La Paz.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for economic injury is 156630.

The States which received an EIDL Declaration # are California, Arizona.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: August 24, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–19112 Filed 8–31–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/09–0460 issued to Hercules Technology II, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Dated: July 27, 2018.

A. Joseph Shepard,

Associate Administrator for Investment and Innovation.

[FR Doc. 2018–19114 Filed 8–31–18; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15656; Colorado Disaster Number CO–00105 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Colorado

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Colorado, dated 08/24/2018.

Incident: 416 Wildfire.

Incident Period: 06/01/2018 through 07/31/2018.

DATES: Issued on 08/24/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/24/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: La Plata, San Juan.

Contiguous Counties:

Colorado: Archuleta, Dolores, Hinsdale, Montezuma, Ouray, San Miguel.

New Mexico: San Juan.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for economic injury is 156560.

The States which received an EIDL Declaration # are Colorado, New Mexico.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: August 24, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–19111 Filed 8–31–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Meeting of the Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration

ACTION: Notice of open Federal Advisory Committee Meeting.

SUMMARY: The U.S. Small Business Administration (SBA) is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting is open to the public.

DATES: Thursday, September 6, 2018, from 9:00 a.m. to 4:00 p.m.

Where: Eisenhower Conference Room B, located on the concourse level.

Contact Info: (Teleconference Dial-in) 1–202–765–1264, Access Code: 67117721; (Webinar) Skype for Business will be utilized for this meeting. Those wishing to attend via Skype should test their systems prior to the meeting to

ensure access. Help for Skype can be found at *https://support.office.com/en-us/skype-for-business*. Participants can join the Skype meeting at: *https://meet.lync.com/sba123/abgarcia/MYK5Y480*. For additional instructions on joining via Skype, please email *veteransbusiness@sba.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs (ACVBA). The ACVBA is established pursuant to 15 U.S.C. 657(b) note, and serves as an independent source of advice and policy. The purpose of this meeting is to focus on strategic planning, updates on past and current events, and the ACVBA's objectives for 2018.

Additional Information: This meeting is open to the public. Advance notice of attendance is requested. Anyone wishing to attend and/or make comments to the ACVBA must contact SBA's Office of Veterans Business Development no later than August 29, 2018 at *veteransbusiness@sba.gov*. Comments for the record will be limited to five minutes to accommodate as many participants as possible. Written comments should be sent to the above by August 29, 2018. Special accommodation requests should also be directed to SBA's Office of Veterans Business Development at (202) 205–6773 or *veteransbusiness@sba.gov*.

For more information on veteran owned small business programs, please visit *www.sba.gov/ovbd*.

Dated: August 14, 2018.

Mitchell Tyner,

SBA Committee Management Officer.

[FR Doc. 2018–19115 Filed 8–31–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Meeting of the Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Interagency Task Force Meeting.

SUMMARY: The U.S. Small Business Administration (SBA) is issuing this notice to announce the location, date, time and agenda for the next meeting of the Interagency Task Force on Veterans Small Business Development. The meeting is open to the public.

DATES: Wednesday, September 5, 2018, from 1:00 p.m. to 4:00 p.m.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

Where: Eisenhower Conference Room B, located on the concourse level.

Contact Info: (Teleconference Dial-in) 1–202–765–1264, Access Code: 15898176; (Webinar) Skype for Business will be utilized for this meeting. Those wishing to attend via Skype should test their systems prior to the meeting to ensure access. Help for Skype can be found at *https://support.office.com/en-us/skype-for-business*. Participants can join the Skype meeting at *https://meet.lync.com/sba l23/abgarcia/LQ7MS9H3*. For additional instructions on joining via Skype, please email *veteransbusiness@sba.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development (Task Force). The Task Force is established pursuant to Executive Order 13540 to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans.

Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to ''six focus areas'': (1) Improving capital access and capacity of small business concerns owned and controlled by veterans and service-disabled veterans through loans, surety bonding, and franchising; (2) ensuring achievement of the pre-established Federal contracting goals for small business concerns owned and controlled by veterans and service disabled veterans through expanded mentor-protégé assistance and matching such small business concerns with contracting opportunities; (3) increasing the integrity of certifications of status as a small business concern owned and controlled by a veteran or service-disabled veteran; (4) reducing paperwork and administrative burdens on veterans in accessing business development and entrepreneurship opportunities; (5) increasing and improving training and counseling services provided to small business concerns owned and controlled by veterans; and (6) making other improvements relating to the support for veterans business development by the Federal Government.

Additional Information: This meeting is open to the public. Advance notice of attendance is requested. Anyone wishing to attend and/or make comments to the Task Force must contact SBA's Office of Veterans Business Development no later than August 29, 2018 at *veteransbusiness@sba.gov*. Comments for the record should be applicable to the ''six focus areas'' of the Task Force and will be limited to five minutes in the interest of time and to accommodate as many participants as possible. Written comments should also be sent to the above email no later than August 29, 2018. Special accommodations requests should also be directed to SBA's Office of Veterans Business Development at (202) 205–6773 or to *veteransbusiness@sba.gov*. For more information on veteran owned small business programs, please visit *www.sba.gov/ovbd*.

Dated: August 14, 2018.

Mitchell Tyner,

SBA Committee Management Officer.

[FR Doc. 2018–19125 Filed 8–31–18; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Windup Order of the United States District Court for the District of Massachusetts, entered August 25, 2016, the United States Small Business Administration hereby revokes the license of New England Partners Capital, L.P., a Delaware Limited Partnership, to function as a small business investment company under the Small Business Investment Company License No. 01710368 issued to New England Partners Capital, L.P., on February 26, 1998 and said license is hereby declared null and void as of August 25, 2016.

United States Small Business Administration

Dated: August 22, 2018.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2018–19136 Filed 8–31–18; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2018–0047]

Charging Standard Administrative Fees for Non-Program Information

AGENCY: Social Security Administration.

ACTION: Notice of updated schedule of standardized administrative fees.

SUMMARY: On August 22, 2012,[1] we announced in the **Federal Register** a schedule of standardized administrative fees we charge to the public. We charge these fees to recover our full costs when we provide information and related services for non-program purposes. We are announcing an update to the previously published schedule of standardized administrative fees.[2]

The updated standard fee schedule is part of our continuing effort to standardize fees for non-program information requests. Standard fees provide consistency and ensure we recover the full cost of supplying information when we receive a request for a purpose not directly related to the administration of a program under the Social Security Act (Act).

DATES: The changes described above are applicable for requests we receive on or after October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Kristina Poist, Social Security Administration, Office of Finance, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1977. For information on eligibility or filing for benefits, visit our website, *socialsecurity.gov*, or call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Section 1106 of the Act and the Privacy Act [3] authorize the Commissioner of Social Security to promulgate regulations regarding agency records and information and to charge fees for providing information and related services. Our regulations and operating instructions identify when we will charge fees for information.[4] Under our regulations, whenever we determine a request for information is for any purpose not directly related to the administration of the Social Security programs, we require the requester to pay the full cost of providing the information.

New Information: We are required to review and update standardized administrative fees at least every two years. Based on the most recent cost analysis, the following table provides the new schedule of standardized administrative fees per request:

Copying an Electronic Folder $38
Copying a Paper Folder $75
Regional Office Certification [5] $64
Record Extract $31
Third Party Manual SSN Verification $33
Office of Central Operations Certification [6] $34
W2/W3 Requests [7] $81
Form SSA–7050, Request for Social Security Earnings Information $91
Request for Copy of Original Application for Social Security Card (Form SS–5) $24
Request for Computer Extract of Social Security Number Application (Numident) $22

We charge $91 for each Form SSA–7050 for detailed yearly Social Security Earnings information. We will certify the detailed earnings information for an additional $34. Note: Certification is usually not necessary. A requester can obtain certified and non-certified detailed yearly Social Security earnings in formation by completing Form SSA–7050, *Request for Social Security Earnings Information.* A requester can continue to obtain non-certified, yearly earnings totals (Form SSA–7004, *Request for a Social Security Statement*) through our free online service *my* Social Security, a personal online account for Social Security information and services. Online Social Security Statements display uncertified, yearly earnings, free of charge, and do not show any employer information. Certified yearly Social Security earnings totals cost $34 and are available by completing Form SSA–7050.

We will continue to evaluate all standard fees at least every two years to ensure we capture the full costs associated with providing information for non-program-related purposes. We require nonrefundable advance payment of the standard fee by check, money order, or credit card. We do not accept cash. Only one form of payment is acceptable in the full amount of the standard fee. If we revise any of the standard fees, we will publish another notice in the **Federal Register**. For other non-program requests for information not addressed here or within the current schedule of standardized administrative fees, we will continue to charge fees calculated on a case-by-case basis to recover our full cost of supplying the information. No other changes will apply to the schedule of standardized administrative fees announced in the **Federal Register** [1] on August 22, 2012.

[1] 77 FR 50757, Aug. 22, 2012.

[2] 81 FR 67414, Sept. 30, 2016.

[3] 42 U.S.C. 1306 and 5 U.S.C. 552a, respectively.

[4] See 20 CFR 402.170, 402.175; Program Operations Manual System (POMS) GN 03311.005.

[5] Requests received in a field office, regional office, or headquarters component.

[6] Requests received in the Office of Central Operations.

[7] W2/W3 Fee is $81 per request, not dependent on the number of years or number of individuals within request.

Additional Information

Additional information is available on our Business Services website or by written request to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

Nancy A. Berryhill,

Acting Commissioner of Social Security.

[FR Doc. 2018–19028 Filed 8–31–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Pilot Schools—FAR 141

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 14, 2018. The collection involves the submission of FAA Form 8420–8, which is used as the base document to initiate and/or confirm the status of the schools' eligibility to hold an FAA Form 8000–4, Air Agency Certificate.

DATES: Written comments should be submitted by October 4, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the

estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0009.

Title: Pilot Schools—FAR 141.

Form Numbers: 8420–8.

Type of Review: This is a renewal of an existing information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 14, 2018 (83 FR 27820). On June 27, 2018, the FAA published the final rule Regulatory Relief, Aviation Training devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions (83 FR 30232). In that rule, the FAA is amending § 141.5(d) to allow part 141 pilot schools that hold training course approvals for special curricula courses to renew their certificates based on their students' successful completion of an end-of-course test for these FAA approved courses. In that rule, the FAA further adjusts the number of pilot schools based on population changes, and to account for the change in burden associated with these new courses.

We estimate that of the 31 new applications for pilot school certificates, 25% will have special curricula courses that will need to be accounted for in the passage rate required for issuance of a certificate in § 141.5(d). Of the 291 applications for renewal of pilot school certificates, approximately 25% would include special curricula courses that must now be accounted for in the passage rate for renewal of a certificate under § 141.5(d). We estimate that it would take .1 hours to add this special curricula course information to both initial and renewal applications.

8 new applications at .1 hours each = .8 hours

73 applications at .1 hours each (adding special curr.) = 7.3 hours

171.0 hours + 8.1 hours = 180 total burden hours

The FAA is also making a burden adjustment to the number of pilot schools, increasing the population from 546 pilot schools to 581 pilot schools.

Respondents: 581 pilot schools.

Frequency: As needed for new applicants; every 24 months for renewals of existing pilot schools.

Estimated Average Burden per Response: 0.5 hours, + 0.1 hours for special curriculum course information (when applicable).

Estimated Total Annual Burden: 31,837 total burden hours. 2,787 total annual reporting burden hours, and 29,050 total annual recordkeeping burden hours.

Issued in Washington, DC, on August 23, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–19126 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0069]

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 August 14, 2018, CSX Transportation, Inc. (CSXT) 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–2018–0069.

CSXT seeks a waiver of compliance from 49 CFR 234.247, *Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements,* to remove approximately 400 stored rail cars and certain railbound equipment from CSXT's Illinois Subdivision, which is currently discontinued from service between milepost (MP) BC 244.7, near Flora, Clay County, Illinois, and MP BC 327.9, near Caseyville, St. Clair County, pursuant to the Surface Transportation Board's issuance of two Discontinuance of Service Exemptions dated December 10, 2015 and January 9, 2017, respectively. CSXT notes that numerous communities have raised concerns and requested it remove the stored rail cars and rail-bound equipment.

CSXT states that no revenue traffic has moved on the discontinued portion of the Illinois Subdivision since June of 2016. Because CSXT has no current intention of resuming revenue service on this Subdivision, CSXT seeks this relief to remove the cars and rail-bound equipment from its tracks as expeditiously as possible. Specifically, CSXT seeks relief to operate over non-functioning highway-rail grade crossings without making inspections and tests required in §§ 234.249 through 234.271. To ameliorate any safety concerns, CSXT will make all train moves at 10 miles per hour or less and during daylight hours, work with local authorities to obtain permission to close the roadway at impacted crossings, and will station an employee at each impacted crossing to provide waring to approaching highway traffic and communicate with motorists as needed.

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 U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue 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 19, 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.dotransportation.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Safety, Chief Safety Officer.

[FR Doc. 2018–19106 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0067]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 6, 2018, the Federal Railroad Administration (FRA) received a petition from the San Mateo County Transit District, on behalf of Caltrain, for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 229, 231, and 238. Specifically, Caltrain seeks a waiver of compliance for their new Stadler-built KISS Electric Multiple Unit (EMU) railcars specific to the passenger area emergency brake valve, the clearance above top of rail, and the safety appliances. FRA assigned the petition Docket Number FRA–2018–0067.

First, Caltrain seeks a waiver of compliance from the emergency brake valve requirements of 49 CFR 229.47(b) and 238.305(c)(5), which require certain equipment to be equipped with an emergency brake valve accessible to another crew member in the passenger compartment and have the words ''Emergency Brake Valve'' legibly stenciled or marked near each valve, or be shown on an adjacent badge plate. The Caltrain EMU utilizes pull handles to provide a means for crew members and passengers to initiate an emergency brake condition. The vehicle is equipped with a modern electro-pneumatic brake system that does not rely on a conventional train-lined brake pipe to initiate an emergency brake command to the train. Instead, emergency brake commands are transmitted using electronic signals using fail-safe design principles. When a pull handle is activated (or ''pulled''), propulsion is cut and irretrievable emergency brake is initiated. The handle can only be reset using a crew key. There is one emergency brake pull handle per doorway area, four total per car, and each is appropriately stenciled with the nomenclature ''Emergency Brake.'' Although the Caltrain EMU emergency brake pull handles are not technically ''valves'' as specified in the regulatory language, Caltrain contends they perform the same function as the required Emergency Brake Valve and satisfy the requirements of 49 CFR 229.47(b) and 238.305(c)(5).

Second, Caltrain seeks a waiver of compliance from the clearance above-top-of-rail (ATOR) requirements of 49 CFR 229.71. The Caltrain EMU will utilize Magnetic Track Brakes that are mounted on each non-powered (*i.e.,* trailer) truck of each car. The track brake has two positions: Stowed and deployed. In its normal stowed position, the track brake is positioned 3.9 inches ATOR. Under maximum permissible wear conditions, the track brake assembly will remain 2.5 inches ATOR. In the deployed position, the track brake is in contact with the top of rail thus violating the minimum required clearance specified in 49 CFR 229.71. Caltrain believes the use of the magnetic track brake enhances the braking capabilities of the vehicle and only violates the required clearance when activated and in use.

Third, Caltrain seeks a waiver of compliance from the safety appliance requirements of 49 CFR 229.71(b), *Sill steps,* (c) *Side handholds,* (d) *End handholds,* (f) *Side-door steps,* and (g) *Uncoupling levers,* as well as 49 CFR 238.229 and 238.230(d). Caltrain believes sill steps and side handholds are intended to allow railroad employees to ride the outside of the vehicle during switching moves to manually couple/uncouple cars and make up manual hose connections. Similarly, end handholds and uncoupling levers are intended to provide a secure hand grip for a railroad worker while performing manual coupling or uncoupling of conventional rail vehicles where it is necessary for the mechanical end connections to be connected or disconnected manually from the ground by a railway employee. Not only will Caltrain operating rules prohibit personnel to mount the exterior of the EMU, but Caltrain will not use the EMU to make any equipment moves within yards, storage tracks, or other areas where personnel would be required to utilize any exterior steps or handholds. The EMU automatic coupler design allows all mechanical, pneumatic, and electrical end connections to be accomplished without manual intervention and without requiring personnel to leave the vehicle. Lastly, the Caltrain EMU vehicle is configured with both high-level and low-level side entry doors. When the EMU is first placed into service, only the low-level doors will be utilized and are accessed from Caltrain's existing 8-inch high platforms. Each low-level side door is equipped with a retractable step to allow passengers to transition from the 8-inch platform to the 22-inch lower-level floor height. The step is located at approximately 16 inches ATOR. In addition, extended vertical handholds are located inside the doorways to facilitate the boarding/alighting process. Therefore, Caltrain petitions FRA to accept the EMU vehicle without sill steps, side handholds, end handholds, or uncoupling levers.

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 U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue 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 parties desire an opportunity for oral comment and a public hearing, 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 19, 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.). Under 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–19105 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0028]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 3, 2018, the Regional Transportation District (RTD) and the City of Denver, Colorado, 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 222. FRA assigned the petition Docket Number FRA–2016–0028.

Specifically, petitioners seek a waiver from the provisions of 49 CFR 222.35(b)(1) to establish a new quiet zone consisting of twelve public highway-rail grade crossings with active grade crossing warning devices comprising both flashing lights and gates that are not equipped with constant warning time devices. The crossing warning devices on the proposed ''Denver East Corridor Quiet Zone'' on the RTD A-Line are primarily activated by a wireless crossing activation system (WCAS) using ''GPS-determined train speed and location to predict how many seconds a train is from the crossing.'' Petitioners assert that this information is communicated wirelessly to the crossing warning devices and seeks to provide constant warning times. Additionally, this system is supplemented by a conventional track warning system in case the WCAS is unavailable.

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 U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue 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 parties desire an opportunity for oral comment and a public hearing, 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 19, 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.). Under 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–19104 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0138]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SERENITY; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 4, 2018.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0138 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0138 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0138, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change

to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SERENITY is:

—*Intended Commercial Use of Vessel:* ''Day Sail Charters, Sailing Charters.''
—*Geographic Region Including Base of Operations:* ''Florida (Near Coastal Waters'' (Base of Operations–Riviera Beach Marina, Florida)
—*Vessel Length and Type:* 32′ retractable keel Sailboat

The complete application is available for review identified in the DOT docket as MARAD–2018–0138 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2018–0138 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: August 28, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–19045 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0136]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MIDNIGHT SUN; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 4, 2018.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0136 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2016–0136 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0136, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453,

Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MIDNIGHT SUN is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Private yacht charters''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Massachusetts, Rhode Island, Connecticut, New York (excluding New York Harbor), New Hampshire, Maryland, Virginia, North Carolina, South Carolina, Georgia, Delaware, Washington DC, Florida'' (Base of Operations: Cape Cod, MA)

—VESSEL LENGTH AND TYPE: 56′ flybridge motor yacht

The complete application is available for review identified in the DOT docket as MARAD–2018–0136 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2016–0136 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * *

Dated: August 28, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–19040 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0137]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TO-MAR-O; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 4, 2018.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0137 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0137 and follow the instructions for submitting comments.
- *Mail or Hand Delivery*: Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2016–0137, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TO-MAR-O is:

—*Intended Commercial Use of Vessel:* ''Pleasure charters—small groups sailing the waters in and around Naples, FL.''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Naples, FL)
—*Vessel Length and Type:* 48′ Catamaran Sailboat

The complete application is available for review identified in the DOT docket as MARAD–2018–137 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2018–0137 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: August 28, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–19047 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0142]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SAILFISH; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 4, 2018.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0142 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0142 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0142, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled **PUBLIC PARTICIPATION**.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SAILFISH is:

—*Intended Commercial Use of Vessel:* ''Captained Charters of up to 6 passengers''
—*Geographic Region Including Base of Operations:* ''Florida, Georgia'' (Base of Operations: Harborage Marina, Stuart, FL)
—*Vessel Length And Type:* 40′ sailing catamaran with fixed keels

The complete application is available for review identified in the DOT docket as MARAD–2018–0142 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will

have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2018–0142 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. § 55103, 46 U.S.C. § 12121.

* * * * *

Dated: August 28, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–19044 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0143]

Request for Comments on the Renewal of a Previously Approved Information Collection: U.S. Merchant Marine Academy Candidate Application for Admission

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. The information to be collected will be used to apply for admission to the U.S. Merchant Marine Academy. Collection of information is completed digitally through an online candidate portal. Part I of the Candidate Application is used to establish initial eligibility. The Academic Information Request, Candidate Activities Record, School Official Evaluations and Biographical Essay are used by the USMMA admissions staff and its Candidate Evaluation Board to select the best qualified candidates for the Academy. Result from the administration of the Candidate Fitness Assessment are used to determine physical qualification. Candidates may also submit an optional resume and additional recommendation letters with their application. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on June 12, 2018.

DATES: Comments must be submitted on or before October 4, 2018.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Mike Bedryk, CDR USMS, Director of Admissions, 516.726.5641, U.S. Merchant Marine Academy, 300 Steamboat Road, New York, NY 11024, *www.usmma.edu/admissions.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Merchant Marine Academy Candidate Application for Admission.

OMB Control Number: 2133–0010.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Regulations pertaining to the U.S. Merchant Marine Academy (USMMA) appeared in the **Federal Register** (Vol. 47, No. 98, p. 21811, dated May 20, 1982) as a final rule. Part 310.57(a) of 46 CFR provides for the collection of information from anyone who is a prospect for admission. It states that ''all candidates shall submit an application for admission to the Academy's Admissions Office.'' Thus, the collection of information through the use of a digital application is the primary means by which selections for admission are made. The information collection consists of Part I, the Academic Information Request, Candidate Activities Record, three School Official Evaluation and Biographical Essay and Candidate Fitness Assessment. Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy. The information from the Academic Information Request, Candidate Activities Record, School Official Evaluations and Biographical Essay is used by the USMMA admissions staff

and its Candidate Evaluation Board to select the best qualified candidates for the Academy.

Respondents: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses: 2,000.

Estimated Hours per Response: 5.

Annual Estimated Total Annual Burden Hours: 10,000.

Frequency of Response: Annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

* * * * *

Dated: August 28, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–19046 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0141]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MAKARA; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 4, 2018.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–20187–0141 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0141 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0141, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MAKARA is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Live-aboard sailing charters and day sailing charters, overnight stays in anchorages and marinas''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Florida, Rhode Island, Massachusetts'' (Base of Operations: Key West, FL)

—VESSEL LENGTH AND TYPE: 47′ sailing catamaran

The complete application is available for review identified in the DOT docket as MARAD–2018–0141 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2018–0141 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide

comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * *

Dated: August 28, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–19043 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0140]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel COOL RUNNINGS; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 4, 2018.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0140 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0140 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0140, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel COOL RUNNINGS is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Day and overnight catamaran sailing charters and sailing tuition''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Florida'' (Base of Operations: Madeira Beach, FL)

—VESSEL LENGTH AND TYPE: 39′ sailing catamaran with fixed keels

The complete application is available for review identified in the DOT docket as MARAD–2018–0140 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2018–0140 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * *

Dated: August 28, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–19042 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Deepwater Port License: Amendment of the Neptune LNG LLC Deepwater Port License and Temporary Suspension of Operations at the Neptune LNG Deepwater Port

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation may, on petition of the licensee, amend a deepwater port license issued under the of the Deepwater Port Act of 1974, as amended. For purposes of this notice, the Maritime Administration (MARAD) provides public notice of its decision to approve the request of Neptune LNG LLC (Neptune) for continuation of the suspension of port operations at the Neptune Deepwater Port (Neptune Port) by amending the Neptune Deepwater Port License (License).

ADDRESSES: The Docket Management Facility maintains the public docket for this project. The docket may be viewed electronically at *http://www.regulations.gov* under docket number USCG–2005–22611.

FOR FURTHER INFORMATION CONTACT: If you have questions about the Neptune Deepwater Port License Amendment and suspension of port operations, please contact Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities at (202) 366–0926 or *Yvette.Fields@dot.gov.* If you have questions on viewing the Docket, please contact Docket Operations at (202) 493–3024.

SUPPLEMENTARY INFORMATION: On December 22, 2017, MARAD received a written request from Neptune for authorization to temporarily suspend operations at the Neptune Port, located approximately 22 miles northeast of Boston, Massachusetts. In the request, Neptune indicated that conditions within the Northeast region's natural gas market continue to impact the Neptune Port's ability to import liquefied natural gas (LNG). As a result, the Neptune Port has remained inactive over the past several years and will likely remain inactive for the foreseeable future. For these reasons, Neptune requested MARAD's authorization to formally suspend port operations for a period of four years.

After conducting a thorough evaluation and consultation with various Federal agencies, MARAD has determined that the amendment of the license is consistent with the requirements of 33 U.S.C. chapter 29 and has accepted Neptune's request and authorized amendment of the License to provide an additional four-year suspension of port operations. The amendment is applicable only to Articles 2, 6, and 19 of the License. All other terms, conditions, and obligations of the License will remain in effect during and after the suspension period. The suspension period became effective June 26, 2018, and will extend for a period of four years, to be measured in calendar days.

In order to resume operations prior to expiration of the four-year suspension period, Neptune must petition MARAD for approval to resume port operations. The petition must be submitted at least six months prior to the proposed re-start date, and certify that Neptune is in receipt of all applicable Federal and State permits, approvals, and authorizations. Should Neptune request an extension of the suspension period, such request must be submitted to MARAD no less than one hundred eighty (180) calendar days prior to the expiration date of the suspension period. Thereafter, MARAD will evaluate, in consultation with the relevant Federal agencies, the appropriateness of such an extension. The final determination on any extension will be rendered by the Maritime Administrator or a designee acting on behalf of the Maritime Administrator.

Additional information pertaining to this public notice may be found in the public docket regarding the Neptune Deepwater Port License online at *www.regulations.gov,* under docket number USCG–2005–22611 (*see* **ADDRESSES**).

Authority: 49 CFR 1.93.

Dated: August 28, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–19048 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0139]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PIPER; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 4, 2018.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0139 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0139 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0139, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PIPER is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Coastal cruising, touring, overnight anchorages''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Florida, Alabama'' (Base of Operations: Fort Myers Beach, Florida)

—VESSEL LENGTH AND TYPE: 39′ Power Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2018–0139 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2018–0139 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * *

Dated: August 28, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–19041 Filed 8–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2018–0025]

Mutual Savings Association Advisory Committee; Meeting

AGENCY: Office of the Comptroller of the Currency (OCC), Department of the Treasury.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The OCC announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC).

DATES: A public meeting of the MSAAC will be held on Tuesday, September 25, 2018, beginning at 8:30 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The OCC will hold the September 25, 2018 meeting of the MSAAC at the OCC's offices at 400 7th Street SW, Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Michael R. Brickman, Deputy Comptroller for Thrift Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the MSAAC will convene a meeting on Tuesday, September 25, 2018, at the OCC's offices at 400 7th Street SW, Washington, DC 20219. The meeting is open to the public and will begin at 8:30 a.m. EDT. The purpose of the meeting is for the MSAAC to advise the OCC on regulatory or other changes the OCC may make to ensure the health and viability of mutual savings associations. The agenda includes a discussion of current topics of interest to the industry.

Members of the public may submit written statements to the MSAAC. The OCC must receive written statements no later than 5:00 p.m. EDT on Tuesday, September 18, 2018. Members of the public may submit written statements to *MSAAC@occ.treas.gov* or by mailing them to Michael R. Brickman, Designated Federal Officer, Mutual Savings Association Advisory Committee, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Tuesday, September 18, 2018, to inform the OCC of their desire to attend the meeting and to provide information that will be required to facilitate entry into the meeting. Members of the public may contact the OCC via email at *MSAAC@OCC.treas.gov* or by telephone at (202) 649–5420. Members of the public who are hearing impaired should call (202) 649–5597 (TTY) by 5:00 p.m. EDT on Tuesday, September 18, 2018, to arrange auxiliary aids such as sign language interpretation for this meeting.

Attendees should provide their full name, email address, and organization, if any. For security reasons, attendees will be subject to security screening procedures and must present a valid government-issued identification to enter the building.

Dated: August 28, 2018.

Joseph M. Otting,

Comptroller of the Currency.

[FR Doc. 2018–19034 Filed 8–31–18; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Transitional Guidance Under Sections 162(f) and 6050X With Respect to Certain Fines, Penalties, and Other Amounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning transitional guidance under sections 162(f) and 6050X with respect to certain fines, penalties, and other amounts.

DATES: Written comments should be received on or before November 5, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Transitional Guidance Under Sections 162(f) and 6050X with Respect To Certain Fines, Penalties, and Other Amounts.

OMB Number: 1545–New.

Regulation Project Number: Notice 2018–23, Form 1098–F.

Abstract: The collection covers the new information reporting requirements under IRC 162(f) and new 6050X, which was added by the Tax Cuts and Jobs Act (TCJA).

Section 13306 of ''An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' Public Law 115–97 (the ''Act''), which was signed into law on December 22, 2017, amended section 162(f) of the Internal Revenue Code (''Code'') and added new section 6050X to the Code. The Department of the Treasury (''Treasury Department'') and the Internal Revenue Service (''IRS'') intend to publish proposed regulations under sections 162(f) and 6050X.

Current Actions: The Treasury Department and the IRS intend to issue proposed regulations amending and adding sections to the Income Tax Regulations with respect to sections 162(f) and 6050X. To assist in the development of the proposed regulations, the IRS has requests comments from the public and affected governments and nongovernmental entities, on any and all issues related to the application and implementation of sections 162(f) and 6050X that the proposed regulations should address.

This submission is being made to seek new approval as required in the Paperwork Reduction Act.

Type of Review: New collection.

Affected Public: Federal government, State, Local, or Tribal Government.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 7 min.

Estimated Total Annual Burden Hours: 24.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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;
- 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: August 28, 2018.

Laurie Brimmer,

IRS, Senior Tax Analyst.

[FR Doc. 2018–19172 Filed 8–31–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Departmental Offices, Treasury Department.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning recordkeeping requirements associated with Reporting of International Capital and Foreign Currency Transactions and Positions—31 CFR part 128.

DATES: Written comments should be received on or before November 5, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments on international capital transactions and positions to: Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue NW, Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by email (*comments2TIC@treasury.gov*), FAX (202–622–2009) or telephone (202–622–1276). Direct all written comments on foreign currency transactions and positions to: Emily Weis, Department of the Treasury, Room 1328, 1500 Pennsylvania Avenue NW, Washington DC 20220. In view of possible delays in mail delivery, please also notify Ms. Weis by email (*Emily.Weis@treasury.gov*), FAX (202–622–9068) or telephone (202–622–5513).

FOR FURTHER INFORMATION CONTACT: Requests for additional information on international capital transactions and positions should be directed to Mr.

Wolkow. Requests for additional information on foreign currency transactions and positions should be directed to Ms. Weis.

SUPPLEMENTARY INFORMATION:

Title: 31 CFR part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

OMB Number: 1505–0149.

Abstract: 31 CFR part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on the monetary reserves of the United States as provided for by the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act. In addition, 31 CFR part 128 establishes general guidelines for reporting on the nature and source of foreign currency transactions of large U.S. business enterprises and their foreign affiliates. This regulation includes a recordkeeping requirement, § 128.5, which is necessary to enable the Office of International Affairs to verify reported information and to secure additional information concerning reported information as may be necessary. The recordkeepers are U.S. persons required to file reports covered by these regulations. The forms prescribed by the Secretary and covered by this regulation, § 128.1(c), are Treasury International Capital (TIC) Forms BC, BL–1, BL–2, BQ–1, BQ–2, BQ–3, CQ–1, CQ–2, D, S, SLT and Treasury Foreign Currency Forms FC–1, FC–2, and FC–3.

Current Actions: No changes to recordkeeping requirements are proposed at this time.

Type of Review: Extension of a currently approved data collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Record keepers: 2,204.

Estimated Average Time per Respondent: One-third hour per respondent per filing.

Estimated Total Annual Burden Hours: 7,391 hours, based on 22,176 responses per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the recordkeeping requirements in 31 CFR part 128.5 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

Emily Weis,

Financial Analyst.

[FR Doc. 2018–19031 Filed 8–31–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0740]

Agency Information Collection Activity Under OMB Review: Request for Substitution of Claimant Upon Death of Claimant

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 4, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0740'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk, Department of Veterans Affairs, 811 Vermont Avenue, Floor 5, Area 368, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0000'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5121(a).

Title: Request for Substitution of Claimant Upon Death of Claimant.

OMB Control Number: 2900–0740.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services established by law for veterans, service personnel, and their dependents and/or beneficiaries. Information requested by this form is authorized under the authority of 38 U.S.C. 5121A, Payment of Certain Accrued Benefits Upon Death of a Beneficiary. VA Form 21P–0847, Application for Request to Substitute Claimant, will be used to allow claimants to request substitution for a claimant who passed away prior to VA processing a claim to completion. This is only allowed when a claimant dies while a claim or appeal for any benefit under a law administered by the VA is pending. The substitute claimant would be eligible to receive accrued benefits due a deceased claimant under Section 5121(a). The substitute claim must be filed no later than one year after the date of the death of the claimant. By law, VA must have a claimant's or beneficiary's written permission (an ''authorization'') to be a substitute claimant. The claimant or beneficiary may revoke the authorization at any time, except if VA has already acted based on the permission.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 30226 on June 27, 2018, pages 30226 and 30227.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 20,000.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–19038 Filed 8–31–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Tuesday,
No. 171 September 4, 2018

Part II

The President

Federal Register
Vol. 83, No. 171
Tuesday, September 4, 2018

Presidential Documents

Title 3—

The President

Proclamation 9776 of August 29, 2018

Adjusting Imports of Aluminum Into the United States

By the President of the United States of America

A Proclamation

1. On January 19, 2018, the Secretary of Commerce (Secretary) transmitted to me a report on his investigation into the effect of imports of aluminum articles on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised me of his opinion that aluminum articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States. In light of this conclusion, the Secretary recommended action to adjust the imports of aluminum articles so that such imports will not threaten to impair the national security. The Secretary also recommended that I authorize him, in response to specific requests from affected domestic parties, to exclude from any adopted import restrictions those aluminum articles for which the Secretary determines there is a lack of sufficient domestic production capacity of comparable products, or to exclude aluminum articles from such restrictions for specific national security-based considerations.

2. In Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), I concurred in the Secretary's finding that aluminum articles, as defined in clause 1 of Proclamation 9704, are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of these aluminum articles by imposing a 10 percent ad valorem tariff on such articles imported from most countries. I further authorized the Secretary to provide relief from these additional duties for any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality and also to provide such relief based on specific national security considerations.

3. Consistent with the Secretary's recommendation that I authorize him to exclude from any adopted import restrictions those aluminum articles for which the Secretary determines there is a lack of sufficient domestic production of comparable products, or for specific national security-based considerations, I have determined to authorize the Secretary to provide relief from quantitative limitations on aluminum articles adopted pursuant to section 232 of the Trade Expansion Act of 1962, as amended, including those set forth in Proclamation 9758 of May 31, 2018 (Adjusting Imports of Aluminum Into the United States), on the same basis as the Secretary is currently authorized to provide relief from the duty established in clause 2 of Proclamation 9704.

4. In light of my determinations, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to the tariff or quotas imposed by previous proclamations. It is my judgment that it is necessary and appropriate, at this time, to maintain the current tariff and quota levels. As directed in Proclamation 9704, the Secretary shall continue to monitor imports of aluminum articles and inform me of any circumstances that, in his opinion, might

indicate the need for further action under section 232 of the Trade Expansion Act of 1962, as amended.

5. The United States continues to hold discussions with countries on satisfactory alternative means to address the threatened impairment to our national security posed by aluminum articles imports. Should these discussions result in an agreement concerning such alternative means, I will take further action as appropriate.

6. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

7. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) The Secretary, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the United States Trade Representative (USTR), the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and such other senior Executive Branch officials as the Secretary deems appropriate, is hereby authorized to provide relief from the quantitative limitations applicable to aluminum articles described in subheadings 9903.85.05 and 9903.85.06 of subchapter III of chapter 99 of the HTSUS for any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, and is also authorized to provide such relief based upon specific national security considerations. Such relief shall be provided for an aluminum article only after a request for relief is made by a directly affected party located in the United States. Such relief may be provided to directly affected parties on a party-by-party basis taking into account the regional availability of particular articles, the ability to transport articles within the United States, and any other factors as the Secretary deems appropriate. If the Secretary determines that relief should be granted to a requesting party for the importation of a particular aluminum article, the Secretary shall publicly post such determination and notify U.S. Customs and Border Protection (CBP) of the Department of Homeland Security concerning such article so that it will be excluded from the applicable quantitative limitation. Relief granted under this clause shall apply only to an article entered for consumption, or withdrawn from warehouse for consumption, on or after the date on which the request for relief is granted by the Secretary. Until such time as any applicable quantitative limitation for a particular article has been reached, CBP shall count any aluminum article for which relief is granted under this clause toward such quantitative limitation at the time when such aluminum article is entered for consumption or withdrawn from warehouse for consumption. Any aluminum article for which relief is granted under this clause shall not be subject to the additional rate of duty set forth in Proclamation 9704, as amended. Aluminum articles for which relief is granted under this clause shall be subject to the duty treatment provided in subheading 9903.85.11 of subchapter III of chapter 99 of the HTSUS, as established by the Annex to this proclamation.

(2) As soon as practicable, the Secretary shall issue procedures for the requests for exclusion described in clause 1 of this proclamation. The issuance of such procedures is exempt from Executive Order 13771 of January

30, 2017 (Reducing Regulation and Controlling Regulatory Costs). CBP shall implement exclusions granted pursuant to clause 1 of this proclamation as soon as practicable.

(3) Clause 3 of Proclamation 9704, as amended by Proclamation 9710, is further amended by striking the fourth and fifth sentences and inserting in lieu thereof the following two sentences: ''If the Secretary determines that a particular aluminum article should be excluded, the Secretary shall publicly post such determination and notify U.S. Customs and Border Protection (CBP) of the Department of Homeland Security concerning such article so that it will be excluded from the duties described in clause 2 of this proclamation. For merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after the date the duty established under this proclamation is effective and with respect to which liquidation is not final, such relief shall be retroactive to the date the request for relief was accepted by the Department of Commerce.''.

(4) Where the government of a country identified in the superior text to subheadings 9903.85.05 and 9903.85.06 of subchapter III of chapter 99 of the HTSUS notifies the United States that it has established a mechanism for the certification of exports to the United States of products covered by the quantitative limitations applicable to these subheadings, and where such mechanism meets the operational requirements for participation in an export certification system administered by the United States, CBP, in consultation with the Secretary, USTR, and other relevant executive departments and agencies, may require that importers of these products furnish relevant export certification information in order to qualify for the treatment set forth in subheadings 9903.85.05 and 9903.85.06. Where CBP adopts such a requirement, it shall publish in the *Federal Register* notice of the requirement and procedures for the submission of relevant export certification information. No article that is subject to the export certification requirement announced in such notice may be entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date specified in such notice, except upon presentation of a valid and properly executed certification, in accordance with the procedures set forth in the notice.

(5) Subdivision (c) of U.S. note 19 to subchapter III of chapter 99 of the HTSUS is amended by inserting at the end the following new sentence: ''Pursuant to subheading 9903.85.11 and superior text thereto, the Secretary may provide that any excluded product shall be granted entry into the customs territory of the United States when the applicable quantitative limitation has filled for the specified period for such good.''.

(6) Subdivision (d) of U.S. note 19 to subchapter III of chapter 99 of the HTSUS is amended by inserting after ''9903.85.06'' the phrase ''and 9903.85.11''.

(7) The superior text for subheadings 9903.85.05 and 9903.85.06 of the HTSUS is amended by deleting ''Aluminum'' and inserting in lieu thereof: ''Except as provided in subheading 9903.85.11, aluminum''.

(8) To implement clause 1 of this proclamation, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation.

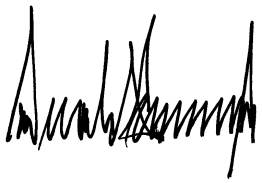
(9) The modifications to the HTSUS made by clauses 5 through 8 of this proclamation and the Annex to this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 30, 2018, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(10) Clause 5 of Proclamation 9704 is amended by inserting ''for consumption'' after ''goods entered'' in the first sentence. Clause 5 of Proclamation 9710, as amended, is amended by striking ''by this proclamation'' from the end of the second sentence. Clause 5 of Proclamation 9739 is amended by striking ''by clause 1 of this proclamation''.

(11) The Secretary, in consultation with CBP and other relevant executive departments and agencies, shall revise the HTSUS so that it conforms to the amendments directed by this proclamation. The Secretary shall publish any such modification to the HTSUS in the *Federal Register*.

(12) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth 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.



Billing code 3295–F8–P

ANNEX

TO MODIFY CERTAIN PROVISIONS OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 30, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting in numerical sequence the following new tariff provision, with the material in the new tariff provisions inserted in the columns labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special," and "Rates of Duty 2", respectively:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
	"Aluminum products of Argentina enumerated in U.S. note 19(b) to this subchapter, each covered by an exclusion granted by the Secretary of Commerce under note 19(c) to this subchapter:			
9903.85.11	Goods granted relief from the application of quantitative limitation otherwise imposed in relation to subheadings 9903.85.05 and 9903.85.06, for any aluminum article determined by the Secretary not to be produced in the United States in a sufficient and reasonably available amount, or of a satisfactory quality, or for specific national security reasons, provided that such goods shall be counted toward any quantitative limitation proclaimed by the President until such limitation has filled.....	The duty provided in the applicable subheading"		

[FR Doc. 2018–19283

Filed 8–31–18; 11:15 am]

Billing code 7020–02–C

Presidential Documents

Proclamation 9777 of August 29, 2018

Adjusting Imports of Steel Into the United States

By the President of the United States of America

A Proclamation

1. On January 11, 2018, the Secretary of Commerce (Secretary) transmitted to me a report on his investigation into the effect of imports of steel articles on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised me of his opinion that steel articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States. In light of this conclusion, the Secretary recommended action to adjust the imports of steel articles so that such imports will not threaten to impair the national security. The Secretary also recommended that I authorize him, in response to specific requests from affected domestic parties, to exclude from any adopted import restrictions those steel articles for which the Secretary determines there is a lack of sufficient domestic production capacity of comparable products, or to exclude steel articles from such restrictions for specific national security-based considerations.

2. In Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States), I concurred in the Secretary's finding that steel articles, as defined in clause 1 of Proclamation 9705, as amended by clause 8 of Proclamation 9711 of March 22, 2018 (Adjusting Imports of Steel Into the United States), are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of these steel articles by imposing a 25 percent ad valorem tariff on such articles imported from most countries. I further authorized the Secretary to provide relief from these additional duties for any steel article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality and also to provide such relief based on specific national security considerations.

3. Consistent with the Secretary's recommendation that I authorize him to exclude from any adopted import restrictions those steel articles for which the Secretary determines there is a lack of sufficient domestic production of comparable products, or for specific national security-based considerations, I have determined to authorize the Secretary to provide relief from quantitative limitations on steel articles adopted pursuant to section 232 of the Trade Expansion Act of 1962, as amended, including those set forth in Proclamation 9740 of April 30, 2018 (Adjusting Imports of Steel Into the United States), and Proclamation 9759 of May 31, 2018 (Adjusting Imports of Steel Into the United States), on the same basis as the Secretary is currently authorized to provide relief from the duty established in clause 2 of Proclamation 9705.

4. In addition, I have been informed that the quantitative limitations set forth in Proclamation 9740 and Proclamation 9759 have in some cases already filled for this year, and that projects in the United States employing thousands of workers may be significantly disrupted or delayed because imports of specific steel articles, which were contracted for purchase prior to my decision to adjust imports of these articles, cannot presently be

entered into the United States because the quantitative limits have already been reached. In light of these circumstances, and after considering the impact on the economy and the national security objectives of section 232 of the Trade Expansion Act of 1962, as amended, I have determined to direct the Secretary to provide relief from the quantitative limitations set forth in Proclamation 9740 and Proclamation 9759 in limited circumstances.

5. In light of my determinations, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to the tariff or quotas imposed by previous proclamations. It is my judgment that it is necessary and appropriate, at this time, to maintain the current tariff and quota levels. As directed in Proclamation 9705, the Secretary shall continue to monitor imports of steel articles and inform me of any circumstances that, in his opinion, might indicate the need for further action under section 232 of the Trade Expansion Act of 1962, as amended.

6. The United States continues to hold discussions with countries on satisfactory alternative means to address the threatened impairment to our national security posed by steel articles imports. Should these discussions result in an agreement concerning such alternative means, I will take further action as appropriate.

7. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

8. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) The Secretary, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the United States Trade Representative (USTR), the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and such other senior Executive Branch officials as the Secretary deems appropriate, is hereby authorized to provide relief from the quantitative limitations applicable to steel articles described in subheadings 9903.80.05 through 9903.80.58 of subchapter III of chapter 99 of the HTSUS for any steel article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, and is also authorized to provide such relief based upon specific national security considerations. Such relief shall be provided for a steel article only after a request for relief is made by a directly affected party located in the United States. Such relief may be provided to directly affected parties on a party-by-party basis taking into account the regional availability of particular articles, the ability to transport articles within the United States, and any other factors as the Secretary deems appropriate. If the Secretary determines that relief should be granted to a requesting party for the importation of a particular steel article, the Secretary shall publicly post such determination and notify U.S. Customs and Border Protection (CBP) of the Department of Homeland Security concerning such article so that it will be excluded from the applicable quantitative limitation. Relief granted under this clause shall apply only to an article entered for consumption, or withdrawn from warehouse for consumption, on or after the date on which the request for relief is granted by the Secretary. Until such time as any applicable

quantitative limitation for a particular article has been reached, CBP shall count any steel article for which relief is granted under this clause toward such quantitative limitation at the time when such steel article is entered for consumption or withdrawn from warehouse for consumption. Any steel article for which relief is granted under this clause shall not be subject to the additional rate of duty set forth in Proclamation 9705, as amended. Steel articles for which relief is granted under this clause shall be subject to the duty treatment provided in subheading 9903.80.60 of subchapter III of chapter 99 of the HTSUS, as established by the Annex to this proclamation.

(2) The Secretary shall, on an expedited basis, grant relief from the quantitative limitations set forth in Proclamation 9740 and Proclamation 9759 and their accompanying annexes for any steel article where (i) the party requesting relief entered into a written contract for production and shipment of such steel article before March 8, 2018; (ii) such contract specifies the quantity of such steel article that is to be produced and shipped to the United States consistent with a schedule contained in such contract; (iii) such steel article is to be used to construct a facility in the United States and such steel article cannot be procured from a supplier in the United States to meet the delivery schedule and specifications contained in such contract; (iv) the payments made pursuant to such contract constitute 10 percent or less of the cost of the facility under construction; and (v) lack of relief from the quantitative limitations on such steel article would significantly disrupt or delay completion of the facility being constructed in the United States with the steel article specified in such contract. Until such time as any applicable quantitative limitation for a particular article has been reached, CBP shall count any steel article for which relief is granted under this clause toward such quantitative limitation at the time when such steel article is entered for consumption or withdrawn from warehouse for consumption. Any steel article for which relief is granted under this clause shall be subject to the additional rate of duty set forth in clause 2 of Proclamation 9705, as amended by this proclamation, when such steel article is entered for consumption or withdrawn from warehouse for consumption. This rate of duty is in addition to any other duties, fees, exactions, and charges applicable to such steel article. Any steel article provided relief under this clause must be entered for consumption, or withdrawn from warehouse for consumption, on or before March 31, 2019, and may not be granted further relief by the Secretary under clause 3 of Proclamation 9705, as amended. Steel articles for which relief is granted under this clause shall be subject to the duty treatment provided in subheading 9903.80.61 of subchapter III of chapter 99 of the HTSUS, as established by the Annex to this proclamation.

(3) The Secretary shall grant relief under clause 2 of this proclamation only upon receipt of a sworn statement signed by the chief executive officer and the chief legal officer of the party requesting relief. Such statement shall attest that (i) the steel article for which relief is sought and the associated contract meet all of the criteria for relief set forth in clause 2 of this proclamation; (ii) the party requesting relief will accurately report to CBP, in the manner that CBP prescribes, the quantity of steel articles entered for consumption, or withdrawn from warehouse for consumption, pursuant to any grant of relief; and (iii) the quantity of steel articles entered pursuant to a grant of relief will not exceed the quantity specified in such contract for delivery on or before March 31, 2019. Upon granting relief under clause 2 of this proclamation, the Secretary shall notify CBP and publish a notice of relief for the quantity of steel articles specified in such contract that are scheduled for delivery on or before March 31, 2019. The Secretary shall revoke any grant of relief under clause 2 of this proclamation if the Secretary determines at any time after such grant that the criteria for relief have not been met and may, if the Secretary deems it appropriate, notify the Attorney General of the facts that led to such revocation.

(4) As soon as practicable, the Secretary shall issue procedures for the requests for exclusion described in clause 1 of this proclamation. The issuance of such procedures is exempt from Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs). CBP shall implement exclusions granted pursuant to clause 1 or relief provided under clause 2 of this proclamation as soon as practicable.

(5) Clause 3 of Proclamation 9705, as amended by Proclamation 9711, is further amended by striking the fourth and fifth sentences and inserting in lieu thereof the following two sentences: ''If the Secretary determines that a particular steel article should be excluded, the Secretary shall publicly post such determination and notify U.S. Customs and Border Protection (CBP) of the Department of Homeland Security concerning such article so that it will be excluded from the duties described in clause 2 of this proclamation. For merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after the date the duty established under this proclamation is effective and with respect to which liquidation is not final, such relief shall be retroactive to the date the request for relief was accepted by the Department of Commerce.''.

(6) In order to establish the duty rate on imports of steel articles for which relief is granted under clause 2 of this proclamation, clause 2 of Proclamation 9705, as amended, is further amended by striking the last sentence and inserting in lieu thereof the following two sentences: ''All steel articles imports covered by subheading 9903.80.61, in subchapter III of chapter 99 of the HTSUS, shall be subject to the additional 25 percent ad valorem rate of duty established herein with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on the date specified in a determination by the Secretary granting relief. These rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported steel articles, shall apply to imports of steel articles from each country as specified in the preceding three sentences.''.

(7) Where the government of a country identified in the superior text to subheadings 9903.80.05 through 9903.80.58 of subchapter III of chapter 99 of the HTSUS notifies the United States that it has established a mechanism for the certification of exports to the United States of products covered by the quantitative limitations applicable to these subheadings, and where such mechanism meets the operational requirements for participation in an export certification system administered by the United States, CBP, in consultation with the Secretary, USTR, and other relevant executive departments and agencies, may require that importers of these products furnish relevant export certification information in order to qualify for the treatment set forth in subheadings 9903.80.05 through 9903.80.58. Where CBP adopts such a requirement, it shall publish in the *Federal Register* notice of the requirement and procedures for the submission of relevant export certification information. No article that is subject to the export certification requirement announced in such notice may be entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date specified in such notice, except upon presentation of a valid and properly executed certification, in accordance with the procedures set forth in the notice.

(8) Subdivision (c) of U.S. note 16 to subchapter III of chapter 99 of the HTSUS is amended by inserting at the end the following new sentence: ''Pursuant to subheadings 9903.80.60 and 9903.80.61 and superior text thereto, the Secretary may provide that any excluded product shall be granted entry into the customs territory of the United States when the applicable quantitative limitation has filled for the specified period for such good.''.

(9) Subdivision (d) of U.S. note 16 to subchapter III of chapter 99 of the HTSUS is amended by inserting after ''9903.80.58'' the phrase ''and 9903.80.60 and 9903.80.61''.

(10) The rate of duty specified in the HTSUS in the general column for heading 9903.80.01 is amended by striking ''25%'' and inserting in lieu thereof: ''The duty provided in the applicable subheading + 25%''.

(11) The rate of duty specified in the HTSUS in the general column for heading 9903.80.02 is amended by striking ''50%'' and inserting in lieu thereof: ''The duty provided in the applicable subheading + 50%''.

(12) The superior text for subheadings 9903.80.05 through 9903.80.58 of the HTSUS is amended by deleting ''Iron'' and inserting in lieu thereof: ''Except as provided in subheadings 9903.80.60 and 9903.80.61, iron''.

(13) To implement clauses 1 and 2 of this proclamation, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation.

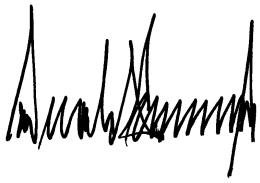
(14) The modifications to the HTSUS made by clauses 8 through 13 of this proclamation and the Annex to this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 30, 2018, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(15) Clause 5 of Proclamation 9705 is amended by inserting ''for consumption'' after ''goods entered'' in the first sentence. Clause 5 of Proclamation 9711, as amended, is amended by striking ''by this proclamation'' from the end of the second sentence. Clause 6 of Proclamation 9740 is amended by striking ''by clause 1 of this proclamation''.

(16) The Secretary, in consultation with CBP and other relevant executive departments and agencies, shall revise the HTSUS so that it conforms to the amendments directed by this proclamation. The Secretary shall publish any such modification to the HTSUS in the *Federal Register*.

(17) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth 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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ANNEX

TO MODIFY CERTAIN PROVISIONS OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 30, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting in numerical sequence the following new tariff provision, with the material in the new tariff provisions inserted in the columns labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special," and "Rates of Duty 2", respectively:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
	"Iron or steel products of Argentina, of Brazil, or of South Korea enumerated in U.S. note 16(b) to this subchapter, each covered by an exclusion granted by the Secretary of Commerce under note 16(c) to this subchapter:			
9903.80.60	Goods granted relief from the application of quantitative limitation otherwise imposed in relation to subheadings 9903.80.05 through 9903.80.58, for any steel article determined by the Secretary not to be produced in the United States in a sufficient and reasonably available amount, or of a satisfactory qualify, or for specific national security reasons, provided that such goods shall be counted toward any quantitative limitation proclaimed by the President until such limitation has filled.....	The duty provided in the applicable subheading		
9903.80.61	Goods subject to a qualifying contract for which relief has been provided from the application of quantitative limitation otherwise imposed in relation to subheadings 9903.80.05 through 9903.80.58, provided that such goods shall be counted toward any quantitative limitation proclaimed by the President until such limitation has filled.....	The duty provided in the applicable subheading + 25%"		

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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