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Rules and Regulations

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Monday, January 8, 2018

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket Nos. R–1442; R–1460; and R–1535]

RIN 7100–AD 87; RIN 7100–AD 99; and 7100 AE–49

Regulatory Capital Rules; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correcting amendments.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) published a final rule in the **Federal Register** on October 11, 2013, regarding Regulatory Capital Rules. This publication corrects a typographical error in those rules whereby a transition provision was unintentionally deleted. The Board also published inconsistent amendments to Regulation Q in final rules published in the **Federal Register** on May 1, 2014, and August 14, 2015, that pertain to firms identified as global systemically important bank holding companies (GSIBs). This publication resolves these inconsistencies.

DATES: These correcting amendments are effective January 8, 2018.

FOR FURTHER INFORMATION CONTACT: Benjamin McDonough, Assistant General Counsel, (202) 452–2036, or Mark Buresh, Senior Attorney, (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board is correcting an error in the final rule that was published in the **Federal Register** on October 11, 2013.[1] The Board is correcting a typographical error in this final rule that caused the unintended deletion of 12 CFR 217.300(c)(1)(i)–(iv), which was initially adopted by the Board on July 2, 2013. Through this correction, the provision pertaining to the grandfathering of certain non-qualifying capital instruments in tier 2 capital for depository institution holding companies with $15 billion or more in total assets as of December 31, 2009, that are not advanced approaches banking organizations and for depository institution holding companies that are advanced approaches banking organization would be reflected in the rule.

The Board is also correcting conflicting amendments in final rules published in the **Federal Register** on May 1, 2014, (79 FR 24528) and August 14, 2015, (80 FR 49082). The May 1, 2014, final rule amended 12 CFR 217.11(a)(4)(ii) effective January 1, 2018. The August 14, 2015, final rule also amended 12 CFR 217.11(a)(4)(ii) effective December 1, 2015, and did not alter the amendments to that paragraph contained in the May 1, 2014, final rule, which are effective on January 1, 2018. As a result, without these corrections the revisions to 12 CFR 217.11(a)(4)(ii) that were effective December 1, 2015, would have been undone effective January 1, 2018. This would have been contrary to the Board's stated intent in the August 14, 2015, final rule that the GSIB surcharge augment the capital conservation buffer.[2] In addition, this would have created situations where 12 CFR 217.11(a)(4)(i) and 12 CFR 217.11(a)(4)(ii) were in conflict.

List of Subjects in 12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended by the following correcting amendments.

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

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

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

■ 2. In § 217.11, paragraph (a)(4)(ii) is revised to read as follows:

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

(a) * * *

(4) * * *

(ii) A Board-regulated institution with a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer in accordance with paragraph (b) of this section, and 100 percent of its applicable GSIB surcharge, in accordance with paragraph (c) of this section, and, if applicable, that has a leverage buffer that is greater than 2.0 percent, in accordance with paragraph (d) of this section, is not subject to a maximum payout amount under this section.

* * * * *

■ 3. In § 217.300, add paragraphs (c)(1)(i) through (iv) to read as follows:

§ 217.300 Transitions.

* * * * *

(c) * * *

(1) * * *

(i) A depository institution holding company of $15 billion or more may include in tier 1 and tier 2 capital non-qualifying capital instruments up to the applicable percentage set forth in Table 8 to § 217.300 of the aggregate outstanding principal amounts of non-qualifying tier 1 and tier 2 capital instruments, respectively, that are outstanding as of January 1, 2014, beginning January 1, 2014, for a depository institution holding company of $15 billion or more that is an advanced approaches Board-regulated institution that is not a savings and loan holding company, and beginning January 1, 2015, for all other depository institution holding companies of $15 billion or more.

(ii) A depository institution holding company of $15 billion or more must apply the applicable percentages set forth in Table 8 to § 217.300 separately to the aggregate amounts of its tier 1 and tier 2 non-qualifying capital instruments.

(iii) The amount of non-qualifying capital instruments that must be excluded from additional tier 1 capital

[1] 78 FR 62018 (October 11, 2013).

[2] 80 FR 49082 (August 14, 2015).

in accordance with this section may be included in tier 2 capital without limitation, provided the instruments meet the criteria for tier 2 capital set forth in § 217.20(d).

(iv) Non-qualifying capital instruments that do not meet the criteria for tier 2 capital set forth in § 217.20(d) may be included in tier 2 capital as follows:

(A) A depository institution holding company of $15 billion or more that is not an advanced approaches Board-regulated institution may include non-qualifying capital instruments that have been phased-out of tier 1 capital in tier 2 capital, and

(B) During calendar years 2014 and 2015, a depository institution holding company of $15 billion or more that is an advanced approaches Board-regulated institution may include non-qualifying capital instruments in tier 2 capital that have been phased out of tier 1 capital in accordance with Table 8 to § 217.300. Beginning January 1, 2016, a depository institution holding company of $15 billion or more that is an advanced approaches Board-regulated institution may include non-qualifying capital instruments in tier 2 capital that have been phased out of tier 1 capital in accordance with Table 8, up to the applicable percentages set forth in Table 9 to § 217.300.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 29, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–00062 Filed 1–5–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 171219999–7999–01]

RIN 0605–AA48

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, required the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 which provided for initial catch up adjustments for inflation in 2016, and requires adjustments for inflation to CMPs under a revised methodology for each year thereafter. The 2017 adjustments for inflation to CMPs to the Department of Commerce's CMPs were published in the **Federal Register** on December 28, 2016 and became effective January 15, 2017. The revised annual methodology provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. Agencies' annual adjustments for inflation to CMPs shall take effect not later than January 15. The Department of Commerce's 2018 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. The Department of Commerce's 2018 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

DATES: This rule is effective January 15, 2018.

FOR FURTHER INFORMATION CONTACT: Stephen Kunze, Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482–1207, Department of Commerce, 1401 Constitution Avenue NW, Room D200, Washington, DC 20230. The Department of Commerce's Civil Monetary Penalty Adjustments for Inflation are available for downloading from the Department of Commerce, Office of Financial Management's website at the following address: *http://www.osec.doc.gov/ofm/OFM_Publications.html*.

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), provided for agencies' adjustments for inflation to CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected. On October 24, 1996, November 1, 2000, December 14, 2004, December 11, 2008, and December 7, 2012, the Department of Commerce published in the **Federal Register** a schedule of CMPs adjusted for inflation as required by law.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,
2. Is assessed or enforced by an agency pursuant to Federal law; and,
3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74) further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment (1) required agencies to adjust the CMP levels in effect as of November 2, 2015, with initial catch up adjustments for inflation through a final rulemaking to take effect no later than August 1, 2016; and (2) requires agencies to make subsequent annual adjustments for inflation to CMPs that shall take effect not later than January 15.

The Department of Commerce's initial catch up adjustments for inflation to CMPs were published in the **Federal Register** on June 7, 2016, and the new CMP levels became effective July 7, 2016. The Department of Commerce's 2017 adjustments for inflation to CMPs were published in the **Federal Register** on December 28, 2016, and the new CMP levels became effective January 15, 2017.

The Department of Commerce's 2018 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These 2018 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of the Department of Commerce. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing

CMPs for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the CMPs. The CMP ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate CMP to assess for a particular violation. The Penalty Policy is maintained and made available to the public on NOAA's Office of the General Counsel, Enforcement Section website at: *http://www.gc.noaa.gov/enforce-office.html*.

The Department of Commerce's 2018 adjustments for inflation to CMPs set forth in this regulation were determined pursuant to the methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term ''cost-of-living adjustment'' is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the 2018 adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage for each CMP by which the Consumer Price Index for the month of October 2017 exceeds the Consumer Price Index for the month of October 2016.

Classification

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Commerce is charged only with performing ministerial computations to determine the dollar amounts of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment are not required for this rule.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Analysis

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as that term is defined in Executive Order 12866.

Regulatory Flexibility Act

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects in 15 CFR Part 6

Law enforcement, Civil monetary penalties.

Dated: December 26, 2017.

Jennifer Ayers,

Acting Deputy Chief Financial Officer and Director for Financial Management, Department of Commerce.

Authority and Issuance

■ For the reasons stated in the preamble, the Department of Commerce revises 15 CFR part 6 to read as follows:

PART 6—CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

Authority: Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321 (31 U.S.C. 3701 note); Sec. 701 of Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 1 note; 28 U.S.C. 2461 note).

§ 6.1 Definitions.

(a) The *Department of Commerce* means the United States Department of Commerce.

(b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and

(2) Is assessed or enforced by an agency pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

§ 6.2 Purpose and scope.

The purpose of this part is to make adjustments for inflation to civil monetary penalties, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74), of each civil monetary penalty provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce).

§ 6.3 Adjustments for inflation to civil monetary penalties.

The civil monetary penalties provided by law within the jurisdiction of the Department of Commerce, as set forth in paragraphs (a) through (f) of this section, are hereby adjusted for inflation in 2018 in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, from the amounts of such civil monetary penalties that were in effect as of January 15, 2017, to the amounts of such civil monetary penalties, as thus adjusted. The year stated in parenthesis represents the year that the civil monetary penalty was last set by law or adjusted by law (excluding adjustments for inflation).

(a) *United States Department of Commerce.* (1) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from $10,957 to $11,181.

(2) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from $10,957 to $11,181.

(3) 31 U.S.C. 3729(a)(1)(G), False Claims Act (1986); violation, minimum from $10,957 to $11,181; maximum from $21,916 to $22,363.

(b) *Bureau of Industry and Security.* (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act (1990), violation, maximum from $45,268 to $46,192.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act (1998), violation, maximum from $36,849 to $37,601.

(3) 22 U.S.C. 6761(a)(l)(B), Chemical Weapons Convention Implementation Act (1998), violation, maximum from $7,370 to $7,520.

(4) 50 U.S.C. 1705(b), International Emergency Economic Powers Act (2007), violation, maximum from $289,238 to $295,141.

(5) 22 U.S.C. 8142(a), United States Additional Protocol Implementation Act (2006), violation, maximum from $29,946 to $30,557.

(c) *Census Bureau.* (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics (2002), each day's delinquency of a violation; total of not to exceed maximum violation, from $1,333 to

$1,360; maximum per violation, from $13,333 to $13,605.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics (2002), violation, maximum from $13,333 to $13,605.

(d) *Economics and Statistics Administration.* (1) 22 U.S.C. 3105(a), International Investment and Trade in Services Act (1990); failure to furnish information, minimum from $4,527 to $4,619; maximum from $45,268 to $46,192.

(e) *International Trade Administration.* (1) 19 U.S.C. 81s, Foreign Trade Zone (1934), violation, maximum from $2,795 to $2,852.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada FTA Protective Order (1988), violation, maximum from $201,106 to $205,211.

(f) *National Oceanic and Atmospheric Administration.* (1) 51 U.S.C. 60123(a), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from $11,052 to $11,278.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from $11,052 to $11,278.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), violation, maximum from $231,391 to $236,114.

(4) 16 U.S.C. 783, Sponge Act (1914), violation, maximum from $1,652 to $1,686.

(5) 16 U.S.C. 957(d), (e), and (f), Tuna Conventions Act of 1950 (1962):

(i) Violation of 16 U.S.C. 957(a), maximum from $82,579 to $84,264.

(ii) Subsequent violation of 16 U.S.C. 957(a), maximum from $177,863 to $181,493.

(iii) Violation of 16 U.S.C. 957(b), maximum from $2,795 to $2,852.

(iv) Subsequent violation of 16 U.S.C. 957(b), maximum from $16,516 to $16,853.

(v) Violation of 16 U.S.C. 957(c), maximum from $355,726 to $362,986.

(6) 16 U.S.C. 957(i), Tuna Conventions Act of 1950,[1] violation, maximum from $181,071 to $184,767.

(7) 16 U.S.C. 959, Tuna Conventions Act of 1950,[2] violation, maximum from $181,071 to $184,767.

(8) 16 U.S.C. 971f(a), Atlantic Tunas Convention Act of 1975,[3] violation, maximum from $181,071 to $184,767.

(9) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988 (1988), violation, maximum from $502,765 to $513,026.

(10) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983 (1983), violation, maximum from $23,933 to $24,421.

(11) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1972), violation, maximum from $27,950 to $28,520.

(12) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act,[4] violation, maximum from $181,071 to $184,767.

(13) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), violation, maximum from $170,472 to $173,951.

(14) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:

(i) Violation as specified (1988), maximum from $50,276 to $51,302.

(ii) Violation as specified (1988), maximum from $24,132 to $24,625.

(iii) Otherwise violation (1978), maximum from $1,652 to $1,686.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from $181,071 to $184,767.

(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,[5] violation, maximum from $181,071 to $184,767.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,[6] violation, maximum from $181,071 to $184,767.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from $25,881 to $26,409.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from $647 to $660.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,[7] violation, maximum from $181,071 to $184,767.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,[8] violation, maximum from $181,071 to $184,767.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from $1,096 to $1,118; maximum from $10,957 to $11,181.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,[9] violation, maximum from $181,071 to $184,767.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,[10] violation, maximum from $181,071 to $184,767.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,[11] violation, maximum from $181,071 to $184,767.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from $157,274 to $160,484.

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,[12] violation, maximum from $181,071 to $184,767

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,[13] violation, maximum from $181,071 to $184,767.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,[14] violation, maximum from $181,071 to $184,767.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from $27,950 to $28,520.

(ii) Subsequent violation, maximum from $82,579 to $84,264.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from $71,264 to $72,718.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from $71,264 to $72,718.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012,[15] violation, maximum from $181,071 to $184,767.

(33) 16 U.S.C. 7407(b), Port State Measures Agreement Act of 2015,[16] violation, maximum from $181,071 to $184,767.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act,[17] violation, maximum from $181,071 to $184,767.

(35) 16 U.S.C. 7705, Ensuring Access to Pacific Fisheries Act,[18] (newly reported penalty), violation, maximum $184,767.

(36) 16 U.S.C. 7805, Ensuring Access to Pacific Fisheries Act,[19] (newly reported penalty), violation, maximum $184,767.

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[1] This National Oceanic and Atmospheric Administration maximum civil monetary penalty, as prescribed by law, is the maximum civil penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

[2] See footnote 1.

[3] See footnote 1.

[4] See footnote 1.

[5] See footnote 1.

[6] See footnote 1.

[7] See footnote 1.

[8] See footnote 1.

[9] See footnote 1.

[10] See footnote 1.

[11] See footnote 1.

[12] See footnote 1.

[13] See footnote 1.

[14] See footnote 1.

[15] See footnote 1.

[16] See footnote 1.

[17] See footnote 1.

[18] See footnote 1.

[19] See footnote 1.

§ 6.4 Effective date of adjustments for inflation to civil monetary penalties.

The Department of Commerce's 2018 adjustments for inflation made by § 6.3, of the civil monetary penalties there specified, are effective on January 15, 2018, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.3, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to January 15, 2018 as provided in § 6.5.

§ 6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to the Department of Commerce's civil monetary penalties annually, which shall take effect not later than January 15, notwithstanding section 553 of title 5, United States Code.

[FR Doc. 2017–28230 Filed 1–5–18; 8:45 am]

BILLING CODE 3510–DP–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[170207157–7157–01]

RIN 0694–AH31

Revisions, Clarifications, and Technical Corrections to the Export Administration Regulations; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: In this final rule, the Bureau of Industry and Security corrects an error in the text of Export Control Classification Numbers (ECCNs) 0D606, 0E606, and 8A609.

DATES: This rule is effective January 8, 2018.

FOR FURTHER INFORMATION CONTACT: Ivan Mogensen, Office of Exporter Services, Bureau of Industry and Security, by telephone: (202) 482–2440 or email: *Ivan.Mogensen@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Overview

On December 27, 2017, BIS published a final rule, Revisions, Clarifications, and Technical Corrections to the Export Administration Regulations (82 FR 61153) (the December 27 rule), which made corrections to certain provisions of the Export Administration Regulations (EAR), including the Commerce Control List (part 774 of the EAR) (CCL). The corrections were editorial in nature and did not affect license requirements. In this final rule, BIS is amending ECCNs 0D606 and 0E606 by reinstating original text that was erroneously replaced with the text for ECCNs 0D614 and 0E614, respectively, in the December 27 rule. In addition, this rule reinstates paragraph (2) of the Special Conditions for STA in ECCN 8A609.

Part 774

ECCNs 0D606 and 0E606: The December 27 rule amended ECCN subparagraphs 0D606.a and 0E606.a to include references to ECCNs 0B606 and 0C606. During drafting, the License Requirements section and the text following the revised subparagraphs for both ECCNs was exchanged with the text for ECCNs 0D614 and 0E614, respectively. In order to follow the guidelines of the original preamble, this correction to the December 27 rule restores the original License Requirements section and the text of ECCNs 0D606 and 0E606 following subparagraph .a in both ECCNs. In addition, this rule replaces the incorrect reference to 0D606 with 0E606 in the Special Conditions for STA of ECCN 0E606.

ECCN 8A609: The December 27 rule amended ECCN 8A609 by revising the title reference in these ECCNs to match the current title of § 740.20(g) and in doing so inadvertently removed paragraph (2) of the Special Conditions for STA. This rule restores paragraph (2) of the Special Conditions for STA in ECCN 8A609.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through 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 15, 2017, 82 FR 39005 (August 16, 2017) has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

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 does not impose any regulatory burden on the public and is consistent with the goals of Executive Order 13563. This rule has been designated 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. This final rule does not contain information collections subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor is 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.

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

4. The Department of Commerce finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act otherwise requiring prior notice and the opportunity for public comment because they are unnecessary. The revisions made by this rule are administrative in nature and do not affect the privileges and obligations of the public. Additionally, it is important that the edits and clarifications are added as soon as possible to prevent improper interpretation of the EAR. The Department also finds that there is good cause under 5 U.S.C. 553(b)(A) to waive the provisions of the Administrative Procedure Act requiring notice and comment because these changes are limited to providing guidance on existing interpretations of current EAR provisions. Because these revisions are not substantive changes to the EAR, the 30-day delay in effectiveness otherwise required by 5 U.S.C. 553(d) is not applicable. No other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) are not applicable because no general notice of proposed rulemaking was required

for this rule by 5 U.S.C. 553, or by any other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

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

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

■ 2. In supplement No. 1 to part 774, Category 0, ECCN 0D606 is revised to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0D606 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of ground vehicles and related commodities controlled by 0A606, 0B606, or 0C606 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN.

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry, except 0D606.y.	NS Column 1.
RS applies to entire entry, except 0D606.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry, except 0D606.y.	See § 746.1(b) for UN controls.

List Based License Exceptions

(See Part 740 for a description of all license exceptions)

CIV: N/A.
TSR: N/A.

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in 0D606.

List of Items Controlled

Related Controls: (1) Software directly related to articles enumerated or otherwise described in USML Category VII are subject to the controls of USML paragraph VII(h). (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content.
Related Definitions: N/A.
Items:

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCNs 0A606 (except for ECCNs 0A606.b or 0A606.y), 0B606, or 0C606.

b. through x. [RESERVED]

y. ''Specific software'' ''specially designed'' for the ''production,'' ''development,'' operation, or maintenance of commodities described in ECCN 0A606.y.

■ 3. In supplement No. 1 to part 774, Category 0, ECCN 0E606 is revised to read as follows:

0E606 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of ground vehicles and related commodities in 0A606, 0B606, 0C606, or software in 0D606 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN.

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry, except 0E606.y.	NS Column 1.
RS applies to entire entry, except 0D606.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry, except 0D606.y.	See § 746.1(b) for UN controls.

List Based License Exceptions

(See Part 740 for a description of all license exceptions)

CIV: N/A.
TSR: N/A.

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 0E606.

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h).
Related Definitions: N/A.
Items:

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities enumerated or otherwise described in ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y), 0B606, or 0C606.

b. through x. [RESERVED]

y. Specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities or software in ECCN 0A606.y or 0D606.y.

■ 4. In supplement No. 1 to part 774, Category 8, ECCN 8A609 is revised to read as follows:

8A609 Surface vessels of war and related commodities (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN.

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry, except 8A609.y.	NS Column 1.
RS applies to entire entry, except 8A609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry, except 8A609.y.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: $1500.
GBS: N/A.
CIV: N/A.

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 8A609.a, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for 9x515 and ''600 series'' items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 8A609.

List of Items Controlled

Related Controls: (1) Surface vessels of war and special naval equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category VI, Surface Vessels of War and Special Naval Equipment, are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content. (3) For controls on diesel engines and electric motors that are ''subject to the EAR'' for surface vessels of war ''subject to the EAR'' or ''subject to the ITAR,'' see ECCN 8A992.g. For diesel engines and electric motors for surface vessels of war ''subject to the ITAR,'' see 22 CFR part 121, Category VI(c) for parts, components, accessories, and attachments, ''specially designed'' for developmental vessels funded by the Department of Defense via contract or other funding authorization. (4) For controls on military gas turbine engines and related items for vessels of war, see ECCN 9A619.

Related Definitions: N/A.

Items:

a. Surface vessels of war ''specially designed'' for a military use and not enumerated or otherwise described in the USML.

Note 1: *8A609.a includes: (i) Underway replenishment ships; (ii) surface vessel and submarine tender and repair ships, except vessels that are ''specially designed'' to support naval nuclear propulsion plants; (iii) non-submersible submarine rescue ships; (iv) other auxiliaries (e.g., AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT); (v) amphibious warfare craft, except those that are armed; and (vi) unarmored and unarmed coastal, patrol, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.*

Note 2: *For purposes of paragraph .a, surface vessels of war includes vessels ''specially designed'' for military use that are not identified in paragraph (a) of ITAR § 121.15, including any demilitarized vessels, regardless of origin or designation, manufactured prior to 1950 and that have not been modified since 1949. For purposes of this note, the term modified does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint), or the addition of ''parts'' or ''components'' available prior to 1950.*

b. Non-magnetic diesel engines with a power output of 50 hp or more and either of the following:

b.1. Non-magnetic content exceeding 25% of total weight; or

b.2. Non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

c. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 8A609 (except for 8A609.y) or a defense article enumerated or otherwise described in USML Category VI and not specified elsewhere on the USML, in 8A609.y or 3A611.y.

Note 1: *Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 8A609.x are controlled by ECCN 8A609.x.*

Note 2: *''Parts,'' ''components,'' ''accessories'' and ''attachments'' specified in USML subcategory VI(f) are subject to the controls of that paragraph. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in ECCN 8A609.y are subject to the controls of that paragraph.*

y. Specific ''parts,'' ''components,'' ''accessories'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or for a defense article in USML Category VI and not elsewhere specified in the USML, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1. Public address (PA) systems;

y.2. Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;

y.3. Galleys;

y.4. Lavatories;

y.5. Magnetic compass, magnetic azimuth detector;

y.6. Medical facilities;

y.7. Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;

y.8. Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;

y.9. Emergency lighting;

y.10. Gauges and indicators;

y.11. Audio selector panels.

Dated: January 2, 2018.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2018–00059 Filed 1–5–18; 8:45 am]

BILLING CODE–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2017–0062]

RIN 0960–AI26

Extension of Sunset Date for Attorney Advisor Program

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending for six months our rule authorizing attorney advisors to conduct certain prehearing proceedings and to issue fully favorable decisions. The current rule is scheduled to expire on February 5, 2018. In this final rule, we are extending the sunset date to August 3, 2018. We are making no other substantive changes.

DATES: This final rule is effective January 8, 2018.

FOR FURTHER INFORMATION CONTACT: Susan Swansiger, Office of Hearings Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605–8500. For information on eligibility or filing for benefits, call our national toll-free number, 800–772–1213 or TTY 800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background of the Attorney Advisor Program

On August 9, 2007, we issued an interim final rule permitting some attorney advisors to conduct certain prehearing proceedings and issue fully favorable decisions when the documentary record warrants doing so. 72 FR 44763. We instituted this practice to provide more timely service to the increasing number of applicants for Social Security disability benefits and Supplemental Security Income payments based on disability. We considered the public comments we received on the interim final rule, and on March 3, 2008, we issued a final rule without change. 73 FR 11349. Under this rule, some attorney advisors may develop claims and, in appropriate cases, issue fully favorable decisions before a hearing.

We originally intended the attorney advisor program to be a temporary modification to our procedures. Therefore, we included in sections 404.942(g) and 416.1442(g) of the interim final rule a provision that the program would end on August 10, 2009, unless we decided to either terminate the rule earlier or extend it beyond that date by publication of a final rule in the **Federal Register**. Since that time, we have periodically extended the sunset date (see 74 FR 33327 extending to August 10, 2011; 76 FR 18383 extending to August 9, 2013; 78 FR 45459 extending to August 7, 2015; and 80 FR 31990 extending to August 4, 2017). As we noted above, the current sunset date for the program is February 5, 2018. 82 FR 34400.

Explanation of Extension

We published the final rule to adopt without change the interim final rule that we published on August 9, 2007. We stated our intent to monitor the program closely and to modify it if it did not meet our expectations. 73 FR 11349.

We explained in the 2008 final rule that the number of requests for hearings had increased significantly in recent years. From 2008 to the present, the number of pending hearing requests has continued to remain at a high level, and we anticipate that we will receive several hundred thousand hearing requests in fiscal year 2018.[1] We are extending the program at this time while we continue to consider our options with respect to the program.

To preserve the maximum degree of flexibility we need to manage our hearings-level workloads effectively, we have decided to extend the attorney advisor rule for six months until August 3, 2018. As before, we reserve the authority to end the program earlier, to

[1] Our budget estimates indicate that we expect to receive approximately 645,000 hearing requests in fiscal year 2018 (available at: *https://www.ssa.gov/budget/FY18Files/2018BO.pdf*).

extend it by publishing a final rule in the **Federal Register**, or to discontinue it altogether.

Regulatory Procedures

Justification for Issuing Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that good cause exists for dispensing with the notice and public comment procedures for this rule. 5 U.S.C. 553(b)(B). Good cause exists because this final rule only extends the expiration date of an existing rule. It makes no substantive changes to the rule. The current regulations expressly provide that we may extend or terminate this rule. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this rule as a final rule.

In addition, because we are not making any substantive changes to the existing rule, we find that there is good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d)(3). To ensure that we have uninterrupted authority to use attorney advisors to address the number of pending cases at the hearing level, we find that it is in the public interest to make this final rule effective on the date of publication.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and although we do not believe that this will be a significant regulatory action under Executive Order (E.O.) 12866, as supplemented by E.O. 13563, OMB has reviewed this final rule.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: December 28, 2017.

Nancy A. Berryhill,

Acting Commissioner of Social Security.

For the reasons stated in the preamble, we are amending subpart J of part 404 and subpart N of part 416 of Chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In § 404.942, revise paragraph (g) to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 3, 2018, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 3. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. In § 416.1442, revise paragraph (g) to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 3, 2018, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

[FR Doc. 2018–00058 Filed 1–5–18; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 123

[EPA–HQ–OW–2016–0376; FRL–9972–51–OW]

RIN 2040–AF67

Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a rule to implement section 425 of the Consolidated Appropriations Act of 2016, which requires EPA to work with the Great Lakes States to establish public notification requirements for combined sewer overflow (CSO) discharges to the Great Lakes. The requirements address signage, notification of local public health departments and other potentially affected public entities, notification to the public, and annual notice. The rule includes a two-stage approach with requirements that apply directly to existing National Pollutant Discharge Elimination System (NPDES) permittees authorized to discharge from a CSO to the Great Lakes Basin, beginning on August 7, 2018 and a requirement that the public notification provisions be incorporated into NPDES permits when these permits are issued or reissued after February 7, 2018, unless the permit has been proposed prior to February 7, 2018 in which case the requirements would be incorporated into the next permit renewal. This rule protects public health by ensuring timely notification to the public and to public health departments, public drinking

water facilities and other potentially affected public entities, including Indian tribes. It provides additional specificity beyond existing public notification requirements to ensure timely and consistent communication to the public regarding CSO discharges to the Great Lakes Basin. Timely notice may allow the public and affected public entities to take steps to reduce the public's potential exposure to pathogens associated with human sewage, which can cause a wide variety of health effects, including gastrointestinal, skin, ear, respiratory, eye, neurologic, and wound infections.

DATES: The final rule is effective on February 7, 2018. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on January 22, 2018. Under section 509(b) of the Clean Water Act, judicial review of this regulation can only be had by filing a petition for review in the U.S. Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2016–0376. All documents in the docket are listed on the *Federal eRulemaking Portal: http://www.regulations.gov.* Certain materials, such as copyrighted material, is not placed on the internet and will be publicly available only in Hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jenelle Hill, Office of Wastewater Management, Water Permits Division (MC4203), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1893; email address: *hill.jenelle@epa.gov.*

SUPPLEMENTARY INFORMATION: The **Federal Register** published EPA's proposed rule on January 13, 2017 (82 FR 4233).

Table of Contents

I. General Information

A. Does this action apply to me?

Section 425 of the Consolidated Appropriations Act of 2016 (Pub. L. 114–113) (hereafter referred to as "Section 425") specifies in Sub-Section (a)(4) that the term "Great Lakes" means "any of the waters as defined in the Section 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1292)." This, therefore, includes Section 118(a)(3)(B), which defines "Great Lakes" as "Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);" and Section 118(a)(3)(C), which defines "Great Lakes System" as "all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes." Collectively, EPA is referring to the Great Lakes and the Great Lakes System as the "Great Lakes Basin." Entities within the Great Lakes Basin potentially regulated by this action are shown in Table 1.

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THIS ACTION

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Federal and State government	EPA or State NPDES permit authorities	924110
Local governments	NPDES permittees with a CSO discharge to the Great Lakes Basin	221320

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated or otherwise affected by this action. Other types of entities not listed in the table could also be regulated. In addition, this rule is not intended to change the conditions under which a NPDES permit is required but, rather, modify a specific requirement applicable to certain permittees. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria described above and found in § 122.32, and the discussion in the preamble. As Section II.B explains, States in the Great Lakes Basin include New York, Pennsylvania, Ohio, Michigan, Illinois, Indiana, Wisconsin, and Minnesota. As of September 2015, all but one of those States (Minnesota) had active NPDES permits for CSO discharges within the Great Lakes Basin subject to the requirements of this rule. EPA has included a list of Great Lakes Basin CSO permittees, which was compiled in concert with state permitting authorities in 2017, in the rulemaking docket (see ''Table of Great Lakes Basin CSO Permittees (as of 2017)''). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is issuing a final rule to establish public notification requirements for CSOs to the Great Lakes Basin. The rule implements Section 425, which requires EPA to ''work with the affected States having publicly owned treatment works that discharge to the Great Lakes to create public notice requirements for a combined sewer overflow discharge to the Great Lakes'' and prescribes minimum requirements for such notice. EPA incorporated existing State approaches for public notification in developing these requirements. EPA sought and considered Great Lakes States and public input during the development of the rule.

This rule requires CSO permittees [1] in the Great Lakes Basin, as defined, to provide public notification of CSO discharges and specifies the minimum content of such notification. The rule's requirements include signage at CSO discharge locations and potentially affected public access areas, methods of providing public notice of CSO discharges, initial and supplemental notice to potentially affected public entities and to the public, and an annual notice. The rule requires that the annual notice summarize the permittee's CSO discharges from the previous year and the CSO permittee's plans for CSO controls.

In addition, the rule includes requirements for Great Lakes Basin CSO permittees to develop a public notification plan that reflects community-specific details (*e.g.,* proposed monitoring locations, means for disseminating information to the public) as to how the permittee would implement the public notification requirements. Permittees are required to seek and consider input on these plans from local public health departments and other potentially affected entities whose waters may be impacted by their CSO discharges. The rule requires that Great Lakes Basin CSO permittees submit the public notification plan to the NPDES permitting authority (''Director'') by August 7, 2018. The public notification plan provides a means of public engagement on the details of implementation of the notification requirements.

This rule protects public health by:

• Ensuring *timely notice to the public* of CSO discharges. This notice is intended to alert members of the public to CSO discharges which may allow them to take steps, such as avoiding activities on the water, to reduce their potential exposure to pathogens associated with human sewage, which can cause a wide variety of health effects, including gastrointestinal, skin, ear, respiratory, eye, neurologic, and wound infections.

• Ensuring *timely notice to local public health departments, public drinking water facilities and other potentially affected public entities, including Indian tribes,* of CSO discharges. This notice is intended to alert these entities to specific CSO discharges and support the development of appropriate responses to the discharges, such as ensuring that beach and waterbody closures and advisories reflect the most accurate and up-to-date information or adjusting the intake or treatment regime of drinking water treatment facilities that have intakes from surface waters impacted by CSO discharges.

• Providing the community and interested stakeholders with *effective and meaningful follow-up notification* that summarizes the permittee's CSO discharges from the previous year and provides stakeholders with information on the CSO permittee's plans to control CSO discharges. This information is intended to help the community understand the current performance of their collection system and how the community's ongoing investment to reduce overflows would address the impacts of CSOs.

The public notification requirements, including the requirement to develop a public notification plan, are implemented through two regulatory mechanisms: Requirements that apply directly to existing NPDES permittees and conditions for permits renewed or issued in the future. This two-stage implementation approach ensures that the requirements of Section 425 are implemented promptly as the Appropriations Act directed EPA to do and also ensures that the benefits of the rule can begin to accrue as quickly as possible, rather than delaying these public health benefits until future permit renewals, which for some permittees could be as long as five or more years away.

First, EPA is adding a new section to the NPDES permit regulations, codified at § 122.38, establishing the public notification requirements for Great Lakes Basin CSO permittees. The requirements in § 122.38 apply directly to existing Great Lakes Basin CSO permittees until their NPDES permits are next reissued after February 7, 2018, unless the permit has been proposed prior to February 7, 2018, in which case the requirements would be incorporated into the next permit renewal.

The public notification plan requirements apply directly to CSO permittees discharging to the Great Lakes Basin beginning August 7, 2018 and the notification methods (other than the annual notice) apply directly beginning November 7, 2018. The annual notice requirements apply beginning in February 7, 2019 (or an alternative date specified by the Director), which allows permittees time to collect data for the first year.[2] In keeping with Section 425, the Director may extend the compliance dates for notification and/or submittal of the public notification plan for individual communities if the Director determines the community needs additional time to comply in order to avoid undue economic hardship.

Second, the public notification requirements for CSO discharges to the Great Lakes Basin shall be implemented as a condition in NPDES permits when they are next reissued after February 7,

[1] Throughout this preamble the owner or operator of a combined sewer system (CSS) is referred to as the ''CSO permittee.''

[2] EPA expects the first annual notice will only contain a partial year of data because the reporting period is for a calendar year and the permittee will not have begun implementing the notification requirements on January 1 of the first year.

2018, unless the permit has been proposed prior to February 7, 2018 in which case the requirements would be incorporated into the next permit renewal. When the permittee's CSO NPDES permit is reissued, the permit is required to include a permit condition addressing public notification of CSO discharges to the Great Lakes Basin. The permit condition incorporates the requirements in § 122.38 for signage, methods of notification and annual notice, as well as requirements to provide specific information relevant to the permittee's implementation of the notification requirements.

C. What is the Agency's authority for taking this action?

This rule is authorized by Section 425 of the Consolidated Appropriations Act of 2016 (Pub. L. 114–113) and the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* including sections 1314(i), 1318, 1342 and 1361(a). Section 425 requires EPA to ''work with the affected States having publicly owned treatment works that discharge to the Great Lakes to create public notice requirements for a combined sewer overflow discharge to the Great Lakes.'' While this rule is called for by an appropriations bill, EPA has independent authority under the Clean Water Act to require these public notification provisions. Specifically, EPA is promulgating this rule under CWA sections 304(i), 308, 402, and 501. Section 304(i) authorizes EPA to establish minimum procedural and other elements of State programs under section 402, including reporting requirements and procedures to make information available to the public. In addition, EPA is promulgating this rule under section 308, which authorizes EPA to require access to information necessary to carry out the objectives of the CWA. Section 402 establishes the NPDES permit program for the control of the discharge of pollutants into the nation's waters. EPA is promulgating this rule under section 402(a)(2), which authorizes the Administrator to prescribe conditions in permits, including conditions on data and information collection, reporting and other requirements he deems appropriate and 402(b) and (c), which require each authorized State, tribe, or territory to ensure that permits meet certain substantive requirements. Section 402(q) requires NPDES permits for discharges from combined sewers to ''conform'' to the 1994 CSO Control Policy. Finally, EPA is promulgating this rule under the authority of section 501, which authorizes EPA to prescribe such regulations as are necessary to carry out provisions of the CWA.

II. Background

A. Combined Sewer Overflows From Municipal Wastewater Collection Systems

Municipal wastewater collection systems collect domestic sewage and other wastewater from homes and other buildings and convey it to wastewater treatment plants for treatment and disposal. The collection and treatment of municipal sewage and wastewater is vital to the public health in our cities and towns. In the United States, municipalities historically have used two major types of sewer systems—separate sanitary sewer systems and CSSs.

Municipalities with separate sanitary sewer systems use that system solely to collect domestic sewage and convey it to a publicly owned treatment works (POTW) treatment plant for treatment. These municipalities also have separate sewer systems to collect surface drainage and stormwater, known as ''municipal separate storm sewer systems'' (MS4s). Separate sanitary sewer systems are not designed to collect large amounts of runoff from rain or snowmelt or provide widespread surface drainage, although they typically are built with additional allowance for some amount of stormwater or groundwater that enters the system as a result of storm events.

The other type of sewer system, CSSs, is designed to collect both sanitary sewage and stormwater runoff in a single-pipe system. This type of sewer system provides the primary means of surface drainage by carrying rain and snowmelt away from streets, roofs, and other impervious surfaces. CSSs were among the earliest sewer systems constructed in the United States and were built until the first part of the 20th century. While some municipalities have undertaken projects to replace CSSs with separate sanitary sewer systems, such projects can be very expensive so many CSSs still exist in the United States.

Under normal, dry weather conditions, combined sewers transport all of the wastewater collected to a sewage treatment plant for treatment. However, under wet weather conditions, when the volume of wastewater and stormwater exceeds the capacity of the CSS or treatment plant, these systems are designed to divert some of the combined flow prior to reaching the POTW treatment plant and to discharge combined stormwater and sewage directly to nearby streams, rivers and other water bodies. These discharges of sewage from a CSS that occur prior to the POTW treatment plant are referred to as combined sewer overflows or CSOs. Depending on the CSS infrastructure design, CSO discharges may be untreated or may receive some level of treatment, such as solids settling in a retention basin and disinfection, prior to discharge.

CSO discharges contain human and industrial waste, toxic materials, and debris as well as stormwater. CSO discharges can be harmful to human health and the environment because they introduce pathogens (*e.g.,* bacteria, viruses, protozoa) and other pollutants to receiving waters, causing beach closures, impairing water quality, and contaminating drinking water supplies and shellfish beds. CSOs can also cause depleted oxygen levels in receiving waters which can impact fish and other aquatic populations. (See EPA–HQ–OW–2016–0376–0043, –0056, –0057, and –0070.)

CSSs serve a total population of about 40 million people nationwide. Most communities with CSSs are located in the Northeast and Great Lakes regions, particularly in Illinois, Indiana, Maine, Michigan, New York, Ohio, Pennsylvania, and West Virginia. Although large cities like Chicago, Cleveland, and Detroit have CSSs, most communities with CSSs have fewer than 50,000 people. Most CSSs have multiple CSO discharge locations (also referred to as outfalls), with some larger communities with CSSs having hundreds of CSO discharge locations.

B. Combined Sewer Overflows to the Great Lakes Basin

As of September 2015, 859 active NPDES permits for CSO discharges had been issued in 30 States plus the District of Columbia and Puerto Rico. Of these 859 permits, 162 permits [3] are for CSO discharges to waters located in the watershed for the Great Lakes and the Great Lakes System (''Great Lakes Basin,'' as explained in Section I.A). The 162 permits for CSO discharges to

[3] EPA identified 184 CSO permits in the Great Lakes Basin in the 2016 Report to Congress: Combined Sewer Overflows into the Great Lakes Basin (EPA 833R–16–006) (EPA–HQ–OW–2016–0376–0043). EPA has adjusted that estimate to reflect additional information. First, 32 CSO permittees identified in the Report to Congress were subtracted; 31 CSO permittees because their permit coverage had been terminated due to sewer separation or other reasons and one CSO permittee because they do not discharge to the Great Lakes Basin. Second, EPA conducted a GIS analysis and verified with States that 10 permits for CSO discharges to the Great Lakes Basin were not identified in the 2016 Great Lakes CSO Report to Congress. A list of these 42 permits is available in the docket for this rulemaking.

the Great Lakes Basin have been issued to 158 communities[4] or permittees. These permittees are located in the States of New York, Pennsylvania, Ohio, Michigan, Illinois, Indiana, and Wisconsin. See ''Table of Great Lakes Basin CSO Permittees (as of 2017)'' in the rulemaking docket for a list of Great Lakes Basin CSO permittees that was compiled in 2017; this list will serve as a starting point for State permitting authorities as they evaluate the applicability of this rule to their permittees. CSO communities are scattered across the Great Lakes Basin, with the greatest concentration in Ohio, southeastern Michigan and northeastern Indiana discharging to Lake Erie, and in northern Indiana and southwestern Michigan discharging to Lake Michigan (see Figure 1).

The majority of the CSO discharges in the Great Lakes Basin are into waterbodies that are tributary to one of the Great Lakes, while a small number of those discharges are directly into one of the Great Lakes. In compiling the list of permittees subject to the requirements of this rule included in the rulemaking docket (''Table of Great Lakes Basin CSO Permittees (as of 2017)''), EPA consulted with State permitting authorities and drainage basin maps for the Great Lakes to confirm that these discharges have the potential to impact the Great Lakes. Because the water in streams and rivers within the drainage basin for a Great Lake has the potential to reach the Great Lakes, EPA has concluded that this rulemaking should apply to all permittees authorized to discharge CSOs in the Great Lakes Basin, consistent with the goal of providing public notification of CSO discharges affecting the Great Lakes.

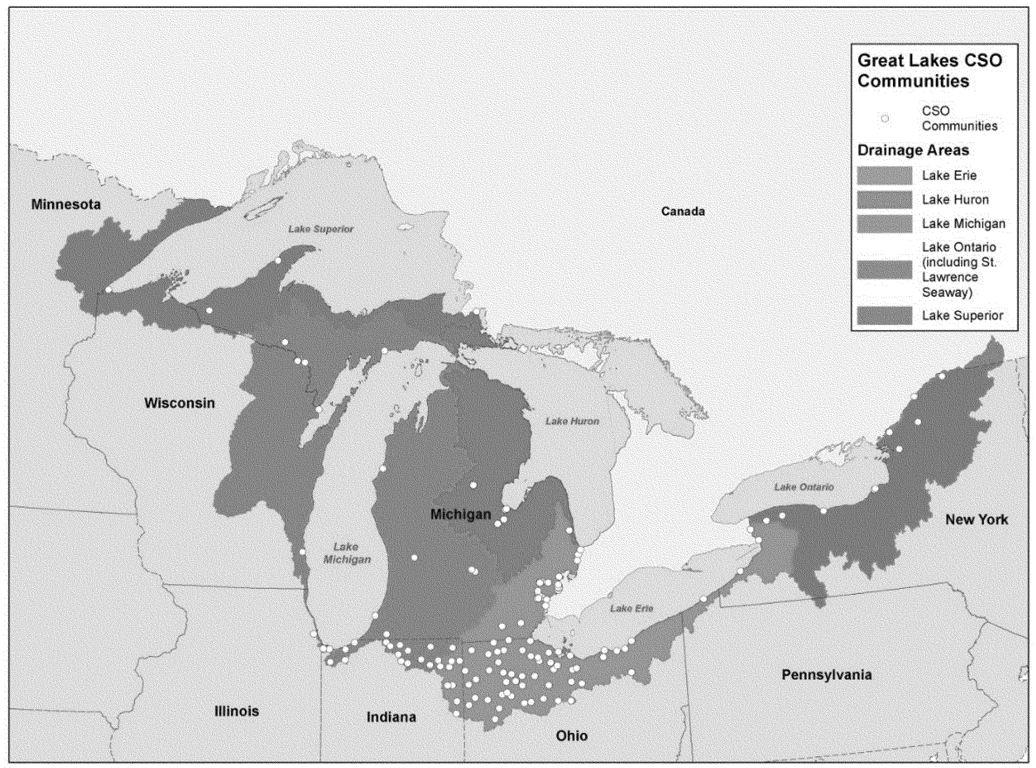

Figure 1. CSO Permittees in the Great Lakes Basin

EPA recently summarized available information on the occurrence and volume of discharges from CSOs to the Great Lakes Basin during 2014 (see EPA–HQ–OW–2016–0376–0043), contained in the public docket for this rulemaking. As summarized in this report, seven States reported 1,482 events where untreated sewage was discharged from CSOs to the Great Lakes Basin in 2014 and an additional 187 CSO events where partially treated sewage was discharged. For the purposes of the Report, partially treated discharges referred to CSO discharges that received a minimum of:

- Primary clarification (removal of floatables and settleable solids may be achieved by any combination of treatment technologies or methods that are shown to be equivalent to primary clarification);
- Solids and floatable disposal; and
- Disinfection of effluent, if necessary to meet water quality standards and protect human health, including removal of harmful disinfection chemical residuals, where necessary.

Additional information regarding CSO discharges to the Great Lakes Basin, including the Report to Congress, is available at *https://www.epa.gov/npdes/combined-sewer-overflows-great-lakes-basin.* Table 2 provides the size distribution of the 158 CSO communities in the Great Lakes Basin.

[4] The number of CSO communities in the Great Lakes Basin is different than the number of CSO permits. Two CSO communities have more than one CSO NPDES permit. These include Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) (4 permits) and the City of Oswego, NY (2 permits). For the purposes of counting communities, communities with multiple CSO permits are counted as one CSO community.

TABLE 2—GREAT LAKES BASIN CSO COMMUNITIES BY COMMUNITY POPULATION

	Community population			Total
	Over 50,000	10,000–49,999	Under 10,000	
Number of CSO Communities	35	69	54	158

Permits issued to Metropolitan Water Reclamation District of Greater Chicago and Wayne County used the population for Chicago and Wayne County, respectively.

As stated above, CSOs can cause human health and environmental impacts (see EPA–HQ–OW–2016–0376–0043, –0056, –0057, and –0070). CSOs often discharge simultaneously with other wet weather sources of water pollution, including stormwater discharges from various sources including municipal separate storm sewers, wet weather sanitary sewer overflows (SSOs) from separate sanitary sewer systems, and nonpoint sources of pollution. The cumulative effects of wet weather pollution from point and nonpoint sources can make it difficult to identify and assign specific cause-and-effect relationships between CSOs and observed water quality problems. The environmental impacts of CSOs are most apparent at the local level (see EPA–HQ–OW–2016–0376–0043, –0056, –0057, and –0070).

C. The CSO Control Policy and Clean Water Act Framework for Reducing and Controlling Combined Sewer Overflows

The CWA establishes national goals and requirements for maintaining and restoring the nation's waters. CSO discharges are point sources subject to the technology-based and water quality-based requirements of the CWA under NPDES permits. Technology-based effluent limitations for CSO discharges are based on the application of best available technology economically achievable (BAT) for toxic and nonconventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. BAT and BCT effluent limitations for CSO discharges are determined based on ''best professional judgment.'' CSO discharges are not subject to permit limits based on secondary treatment requirements that are applicable to discharges from POTWs.[5] Permits authorizing discharges from CSO discharge points must include more stringent water quality-based requirements, when necessary, to meet water quality standards (WQS).

EPA issued the CSO Control Policy on April 19, 1994 (59 FR 18688). The CSO Control Policy ''represents a comprehensive national strategy to ensure that municipalities, permitting authorities, water quality standards authorities, and the public engage in a comprehensive and coordinated effort to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives.'' (59 FR 18688). The policy assigns primary responsibility for implementation and enforcement to NPDES permitting authorities (generally referred to as the ''Director'' in the NPDES regulations) and water quality standards authorities.

The policy also established objectives for CSO permittees to: (1) Implement ''nine minimum controls'' and submit documentation on their implementation; and (2) develop and implement a long-term CSO control plan (LTCP) to ultimately result in compliance with the CWA, including water quality-based requirements. In describing NPDES permit requirements for CSO discharges, the CSO Control Policy states that the BAT/BCT technology-based effluent limitations ''at a minimum include the nine minimum controls'' (59 FR 18696). One of the nine minimum controls is ''Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts.''

In December 2000, as part of the Consolidated Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), Congress amended the CWA by adding Section 402(q). This amendment is commonly referred to as the ''Wet Weather Water Quality Act of 2000.'' It requires that each permit, order, or decree issued pursuant to the CWA after the date of enactment for a discharge from a municipal combined sewer system shall conform to the CSO Control Policy.

D. NPDES Regulations Addressing CSO Reporting

The NPDES regulations require NPDES permits to include requirements for monitoring discharges, including CSO discharges, and reporting the results to the permitting authority with a reporting frequency dependent on the nature and effect of the discharge, but in no case less than once a year. See § 122.44(i)(2). In addition, NPDES permits must require permittees to report noncompliance, including CSO discharges, to their permitting authority. Permit noncompliance that may endanger health or the environment must be reported by the permittee to their permitting authority both orally and through a report submission. See § 122.41(l)(6). All other noncompliance must be reported when other monitoring reports are submitted (*e.g.,* Discharge Monitoring Reports (DMRs)). See § 122.41(l)(7).

E. Section 425 of the Consolidated Appropriations Act of 2016—Requirements for Public Notification of CSO Discharges to the Great Lakes Basin

Section 425 was enacted as part of the 2016 Consolidated Appropriations Act and did not amend the CWA. Section 425(b)(1) requires EPA to work with the Great Lakes States to establish public notice requirements for CSO discharges to the Great Lakes Basin. Section 425(b)(2) provides that the notice requirements are to address the method of the notice, the contents of the notice, and requirements for public availability of the notice. Section 425(b)(3)(A) provides that, at a minimum, the contents of the notice are to include the dates and times of the applicable discharge; the volume of the discharge; and a description of any public access areas impacted by the discharge. Section 425(b)(3)(B) provides that the minimum content requirements are to be consistent for all affected States.

Section 425(b)(4)(A) calls for follow-up notice requirements that provide a description of each applicable discharge; the cause of the discharge; and plans to prevent a reoccurrence of a CSO discharge to the Great Lakes Basin consistent with section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) or an administrative order or consent decree under such Act. Section 425(b)(4)(B) provides for annual publication requirements that list each treatment works from which the Administrator or the affected State receive a follow-up notice.

Section 425(b)(5) requires that the notice and publication requirements described in Section 425 shall be implemented within two years. The

[5] *Montgomery Environmental Coalition et al.* v. *Costle,* 646 F.2d 568, 592 (D.C. Cir. 1980).

Administrator of the EPA, however, may extend the implementation deadline for individual communities if the Administrator determines the community needs additional time to comply in order to avoid undue economic hardship. Finally, Section 425(b)(6) clarifies that ''[n]othing in this subsection prohibits an affected State from establishing a State notice requirement in the event of a discharge that is more stringent than the requirements described in this subsection.''

F. Working With the Great Lakes States and Requesting Public Input

As called for in the legislation, EPA worked with the Great Lakes States in developing the rule to implement section 425 of the 2016 Consolidated Appropriations Act. In discussions with EPA, NPDES program officials in each State with CSO discharges to the Great Lakes Basin described existing State notification requirements, shared insights on implementation issues and provided individual perspectives during the development of the proposed rule.

On August 1, 2016, EPA published a notice in the **Federal Register** requesting stakeholder input on potential approaches for developing public notice requirements for CSO discharges to the Great Lakes Basin under section 425. As part of this effort, EPA held a public ''listening session'' on September 14, 2016, in Chicago, Illinois, which provided stakeholders and other members of the public an opportunity to share their views regarding potential new public notification requirements for CSO discharges to the Great Lakes Basin. A summary of the oral comments made at the public listening session is included in the docket for this rulemaking.[6] In addition, the Agency requested written comments. EPA received a total of 787 written comments, all of which were submitted to the docket (see EPA–HQ–OW–2016–0376–0002 through EPA–HQ–OW–2016–0376–0041). These comments informed the development of the proposed rule and were discussed throughout the preamble to the proposed rule.

On January 13, 2017, EPA published the proposed rule requesting comments on Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin (82 FR 4236). The comment period for the proposed rule closed on March 14, 2017. EPA received a total of 1,300 written comments, which were submitted to the docket (see EPA–HQ–OW–2016–0376–0129 through EPA–HQ–OW–2016–0376–0176). EPA briefed NPDES program officials in the Great Lakes States on the comments EPA received, and the officials engaged in discussions with EPA about possible revisions to the proposed rule to address the public comments. Comments received on the proposed rule are discussed further in Section III.

[6] See Docket ID No. EPA–HQ–OW–2016–0376 at *http://www.regulations.gov.*

III. Summary of the Proposed Rule and Comments Received

The proposed requirements to implement Section 425 were based on an evaluation of current notification requirements and practices in the Great Lakes Basin and elsewhere, and input from officials in the Great Lakes States and the public, including input received in response to EPA's August 1, 2016 request. The proposal explained EPA's expectations for CSO permittees discharging to the Great Lakes Basin to ensure that the public receives adequate notification of CSO occurrences and CSO impacts. The proposed requirements aligned with the CSO Control Policy, which includes public notification as one of the nine minimum controls for CSO permittees.

A. Overview of Proposed Rule

The **Federal Register** published EPA's proposed rule on January 13, 2017 (82 FR 4233). EPA proposed requirements for public notification of CSO discharges to the Great Lakes Basin to be codified at § 122.38. The proposed requirements addressed signage, initial and supplemental notification of local public health departments and other potentially affected public entities (which may include neighboring municipalities, public drinking water utilities, State and county parks and recreation departments and Indian tribes) whose waters may be potentially impacted, initial and supplemental notification of the public and annual notice to the public and the Director.

EPA further proposed to require NPDES permittees authorized to discharge CSOs to the Great Lakes Basin to develop a public notification plan that would provide community-specific details as to how they would implement the notification requirements. Under the proposal, CSO permittees in the Great Lakes Basin would seek and consider input from local public health departments, any potentially affected public entities and Indian tribes whose waters may be impacted by the permittee's CSO discharges in developing the public notification plan that would be submitted to the Director. Under the proposed rule, the plan would be made available to the public and submitted to the Director within six months of the publication date of the final rule.

Under the proposed rule, the requirement to provide public notice of CSO discharges would initially apply by regulation to all existing CSO permittees. Then, as the NPDES permit for each CSO permittee is reissued, the proposed rule at § 122.42(f) would require that the public notice condition be incorporated into all such permits.

B. Summary of Comments Received

EPA received about 45 unique comments on the proposed rule from States, municipalities, environmental stakeholders, trade associations, and other members of the public. Many commenters expressed support for required public notification of CSO discharges in the Great Lakes Basin, while other commenters suggested that aspects of the proposed rule were too burdensome. Many commenters supported some aspects of the proposed rule while suggesting revisions to other parts. Below is a summary of some of the key topics on which EPA received comments. For a full account of comments received, see the rulemaking docket.

- ''Great Lakes'' versus ''Great Lakes Basin''—Several commenters asserted that Section 425 was only intended to address CSO discharges directly into the Great Lakes, rather than CSO discharges into waters in the Great Lakes Basin as proposed while others supported the scope of the proposed rule. For discussion of EPA's rationale for retaining the scope of the rulemaking to cover the Great Lakes Basin see Section II.B. EPA also received comments which recommended that the rulemaking should be applied nationally and not just limited to the Great Lakes region. Given the short two-year implementation timeframe in Section 425 and the specific statutory intent, EPA chose to limit the scope of this rulemaking to the Great Lakes region.
- Untreated CSOs versus All CSOs (untreated and partially treated)—Some commenters suggested that the requirements of the rule should only apply to untreated CSOs, while several others agreed with the approach in the proposed rule. For discussion of EPA's decision to apply the requirements to all CSO discharges see Sections II.B and V.B.3.
- Initial notice timing—Some commenters suggested that the proposed time window of four hours for the initial notice was too long, while some felt it was an appropriate length, and others suggested longer time windows. For discussion of EPA's decision to retain

the four-hour time frame see Section V.B.5; also see Section IV.I.

- Supplemental notice timing—Many commenters suggested that the time period in which the supplemental notice must be provided should be longer than the proposed 24 hours. Many commenters suggested timeframes of five or seven days. For discussion of changes EPA has made to the supplemental notice timing see Section IV.C.
- Annual notice requirements—Some commenters supported the annual notice requirements in the proposed rule. Others said the annual notice is duplicative of other requirements (*e.g.,* the proposed supplemental notice requirements, existing permit requirements). Some commenters suggested that instead of permittees, States should be required to compile the annual notice and make it publicly available. For discussion of EPA's rationale for retaining the annual notice requirements, as well as changes that EPA has made in the final rule in response to comments on the annual notice requirements, see Sections IV.E, V.B.2, and VI.A.
- Implementation timeline—Many commenters agreed with the implementation timeline and two-stage approach with the flexibility for the Director to extend the compliance dates on a case-by-case basis. Some commenters preferred that EPA delay implementation of the requirements until the next permit renewal. Other commenters suggested 12 months rather than 6 months be allowed for some or all communities to initially implement the new requirements. For discussion of EPA's rationale for the final rule compliance timeline, two-stage approach, as well as the flexibility in the final rule for the Director to extend that timeline, see Sections II.E, IV.H, V.B.7, and VI.A.

The next section (Summary of Revisions Made in the Final Rule) includes an explanation of all of the revisions EPA has made in the final rule in response to the public comments received on the proposed rule. In addition, EPA has prepared a response to comments document, which can be found in the docket for this rulemaking.

IV. Revisions to the Final Rule

EPA reviewed and considered public comments received on the proposed rule and made several modifications to the regulatory requirements in response to those comments. Below is a summary of those revisions, some of which involve clarifying language to better convey the intent of the requirement, while others address the substance of the requirement. The list of regulatory changes in each sub-section below is organized by references to the proposed rule (see 82 FR 4233) sections and numbering, references within the summary of the change include citations to the final rule. The revisions EPA has made are intended to respond to the comments, increase flexibility for States, and ease implementation.

A. Revisions To Ensure Consistent Terminology

Edits were made to the following proposed regulatory text to improve clarity and consistency of language used:

- § 122.21(j)(8)(iii)—''Each applicant that discharges'' revised to ''Each permittee authorized to discharge.'' Edit made to be consistent with terminology in: § 122.38(a) and (b).
- § 122.38(d)(4)—''that may be affected'' revised to ''that may be impacted.'' Edit made to be consistent with terminology in: § 122.38(a)(1)(i) and (iii), (a)(2)(i)(B), (a)(3)(ii)(B), and (b)(5).
  - Conforming edits were also made at: § 122.38 (a)(2)(i), (c)(6), and (d)(2) (from ''whose waters may be affected'' to ''whose waters may be impacted'').
- § 122.38(b)(6)—''public access areas impacted by each CSO discharge'' revised to ''public access areas potentially impacted by each CSO discharge.'' This ensures consistency with the above mentioned sections where the word ''potentially'' is used with ''impacted'' to make clear that the permittee does not need to verify if the area was impacted, but rather to consider if there is potential for the area to be impacted by the CSO discharge.
- § 122.42(f)—''Any permit issued for combined sewer overflow (CSO) discharges to the Great Lakes Basin'' revised to ''Any permit issued authorizing the discharge of a combined sewer overflow (CSO) to the Great Lakes Basin.'' Edit made to be consistent with terminology in: § 122.38(a) and (b), as well as the revision to § 122.21(j)(8)(iii) above.
- § 122.38(a)(1)(i)(A)—Revisions to replace the word ''outfall'' with ''discharge point,'' to use consistent terminology with the CSO Policy.
  - Conforming edits were also made at §§ 122.38(a)(1)(ii)(C), (a)(1)(iv), (a)(3)(i), (b) introductory text, (b)(1), and (c)(1), (8), and (9) and 122.42(f)(2) and (3).

B. Revisions to Wording To Clarify That Consolidated Reporting Option Applies to Discharges During the Same Precipitation-Related Event

It is EPA's intention that if multiple CSO discharges occur on the same water body from multiple CSO discharge locations during the same precipitation event, that the permittee has the flexibility to provide one public notification to cover the multiple discharges. Some commenters pointed out that the wording EPA used in the proposed rule, ''at the same time,'' was unclear and might imply that the discharges had to occur simultaneously, rather than simply as a result of the same storm event. Because of this potential lack of clarity, some commenters raised questions as to whether multiple CSO discharges that start and stop during the same precipitation event would require multiple, separate public notices. EPA intends that only one notification be required under these circumstances. In addition, EPA has included a provision in the rule that allows permittees to provide one notice when there are discharges from multiple CSO discharge points as a result of the same precipitation event. These notices can describe broader areas likely to be impacted by discharges during the precipitation event, eliminating the need to provide separate initial notifications every time the permittee becomes aware of a new discharge associated with the same event. Some commenters questioned whether these discharges had to have occurred at exactly the same time in order to be grouped together. EPA intends that multiple discharges that result from the same precipitation event, even if they are not occurring at exactly the same time, may be grouped together in one public notification. EPA has revised the wording in the final rule to make this clearer by changing the proposed rule's description of discharges occurring ''at the same time'' to discharges occurring ''during the same precipitation-related event.'' It is EPA's expectation that the initial notification would be made within four hours of the permittee becoming aware of the first CSO discharge in the group of discharges that are being reported together; therefore, grouping multiple discharges into one notification is intended to reduce burden but would not provide a community additional time beyond the four-hour period.

EPA is using the terminology ''precipitation-related'' to include rainfall, snowfall, and snowmelt. This is consistent with the CSO Policy, which states that it applies ''to all CSSs that overflow as a result of storm water flow, including snow melt runoff (40 CFR Section 122.26(b)(13)).''

EPA has made the following revisions to the wording in the final rule to address this:

• § 122.38(a)(2)(i)(B)—revised ''Where CSO discharges from the same system occur at multiple locations at the same time'' to ''Where CSO discharges from the same system occur at multiple locations during the same precipitation-related event.''

◦ Conforming edits were also made at: § 122.38(a)(2)(ii)(A), (a)(3)(ii)(B), (a)(3)(iii)(A), and (b)(2).

C. Revisions To Extend the Timeframe for the Supplemental Notice From 24 Hours to Seven Days

The final rule requires supplemental information to be provided to the public, public health department and other affected public entities and Indian Tribes within seven days of the permittee becoming aware that the CSO discharge(s) has ended. The proposed rule would have required this information to be provided within 24 hours. Many commenters indicated that this was too short of a timeframe, and suggested that a longer window of five or seven days would be more appropriate. Some commenters pointed out that running models and validating the estimated discharge volume and duration takes time and resources that are not available on nights, weekends, and holidays. Other commenters also noted that CSO discharges can be discontinuous, so communities need more than 24-hours to determine if the discharge has actually ended. In response to these concerns, EPA contemplated revising the timeframe to either five or seven days. Some of the State permit writers pointed out that five days is consistent with other requirements that CSO communities already have, so aligning the timeframe would reduce confusion and burden that could be caused by multiple reporting requirements.[7] Because of this, EPA anticipates that some States will use five days for the supplemental notice requirements in permits to be consistent with this and other reporting timeframes. EPA has not precluded this; however, to allow for greater flexibility for those circumstances where seven days may make more sense, EPA has revised the requirement to allow a maximum of seven days for the supplemental notice. Accordingly, EPA has made the following revisions in the final rule:

• § 122.38(a)(2)(ii)—revised ''Within twenty-four (24) hours'' to ''Within seven (7) days.''

◦ Conforming edits were also made at: § 122.38(a)(3)(iii).

D. Revisions To Allow Greater Flexibility Regarding Signage

EPA received several comments regarding the burden of the signage requirement in the proposed rule. Specifically, commenters indicated that the burden estimate did not adequately account for the high replacement rate that would occur if the signs need to be replaced when they were next reset. EPA's intention was that signs would be updated to reflect the required information when they need to be replaced due to normal wear or damage. Based on this reasoning, EPA estimated that signs would need to be replaced once every 10 years. It is now EPA's understanding that in some communities' signs are reset at a much higher rate (for example some signs are located in an area where they fall down regularly and the community frequently stands the sign back up and re-secures it in the ground (*i.e.,* resets the sign)). In order to better represent EPA's intentions for this requirement, EPA has deleted ''or reset'' from the final regulation as follows:

• § 122.38(a)(1)(iii)—deleted ''or reset'' from ''the sign is not required to meet the minimum requirements specified in paragraph (i) until the sign is replaced or reset.''

Some commenters also indicated that there are certain circumstances under which signage at a CSO discharge point is not warranted because there is no means for public access of the receiving water in the vicinity of the discharge point. Because one of the drivers behind this rulemaking is to reduce the public's exposure to CSO discharges, EPA has decided to add some flexibility for those instances where it is not expected that the public will be able to access the area or come into contact with the receiving water and therefore would not benefit from the notification that the signage would have provided. EPA has added language to the final rule to allow the Director to waive the signage requirement if such conditions have been demonstrated by the permittee to the Director's satisfaction. EPA has made the following change to the final rule to reflect this:

• § 122.38(a)(1)(i)—added ''(unless the permittee demonstrates to the Director that no public access of, or public contact with, the receiving water is expected)'' after CSO discharge point. EPA has also made some minor formatting edits to this part of the provision to improve clarity.

E. Revisions To Provide Greater Flexibility in the Annual Notice Requirements

EPA received several comments on the annual notice requirements in the proposed rule. Some commenters suggested that the requirements were redundant of other current reporting requirements in CSO permits. Some commenters asserted that the annual notice requirements were overly burdensome. The annual notice requirements are intended to ensure that the statutory requirements in Section 425 are addressed by the rule, including requirements outlined in Section 425(b)(4) for: Follow-up notice that provides a ''description of each applicable discharge,'' ''the cause of the discharge,'' and ''plans to prevent a reoccurrence of a combined sewer overflow discharge to the Great Lakes''; as well as annual publication ''that list each treatment works from which the Administrator or the affected State receive a follow-up notice.''

The final rule is responsive to these components of Section 425 by requiring:

• A description of each applicable discharge, including: Location, receiving water, any treatment provided (if applicable), date, location, duration, volume, and a description of any public access areas that were potentially impacted by the CSO discharge, and a summary of any monitoring data for CSO discharges (if available).

• Information on the cause of each discharge, and when that cause is precipitation, information on the amount of precipitation that caused the discharge.

• Information on plans to prevent a reoccurrence of CSO discharges in the form of a concise summary of implementation of the nine minimum controls and the status of implementation of the CSO long-term control plan (or a similar plan that explains how the permittee is addressing CSO discharges).

Providing annual notice improves transparency and accountability to the public about the presence and magnitude of CSO discharges in their community. It also highlights progress that is being made by permittees to reduce CSO discharges and highlights the value of investments that are being made in the infrastructure.

The final rule also includes several revisions to the annual notice requirements to improve clarity and allow more flexibility. The added flexibilities are intended to allow Great Lakes Basin CSO permittees that are already subject to existing State or local reporting requirements, which contain

[7] One example that was raised by a NPDES permitting authority was an existing NPDES permit condition at § 122.41(l)(6)(i), which is a reporting requirement that involves a written report that must ''be provided within 5 days of the time the permittee becomes aware of the circumstances.''

the same information as required in this rule's annual notice requirement, to use these reports to meet this rule's requirements. The flexibilities also allow a permittee, whose State permitting authority publishes an annual CSO report that contains the same information for a Great Lakes Basin CSO permittee as is required in this rule's annual notice requirement, to use the State report to meet the rule's requirements. Revisions to the final rule to add these flexibilities include:

- § 122.38(b)—Revised ''(or an earlier date specified by the Director)'' to ''(or an alternative date specified by the Director)'' to allow the Director the flexibility to specify an alternative due date for the annual notice to be made available to the public. This allows the Director to specify an alternative due date to coincide with an existing reporting requirement, where one exists.
- § 122.38(b)—Added a sentence to the end of the introductory text of § 122.38(b) pertaining to permittees whose State permitting authority has published or will publish an annual report containing all of the required minimum information about the Permittee, that allows the Permittee to make available the State-issued annual report in order to meet this requirement. This addresses scenarios like that in Michigan, described in Section V.B.2 below.
- § 122.38(b)—Added a sentence to the end of the introductory text of § 122.38(b) to allow permittees that have existing report(s) that are written annually that collectively contain all of the required minimum information to make that/those report(s) publicly available in order to meet the requirement. This gives Permittees the flexibility to use existing CSO reports, if they contain all of the minimum information required by the final rule, to meet the annual notice requirement.
- § 122.38(b)(1) and (d)(11)—Deleted the minimum requirement to include ''Information on the availability of the permittee's public notification plan and a summary of significant modifications to the plan that were made in the past year.'' EPA concluded that this proposed requirement was somewhat duplicative of another requirement in the rule, under the public notification plan requirements at final rule § 122.38(c). In addition, to ensure that a summary of significant[8] modifications to the public notification plan is made available, EPA added language to the final rule at § 122.38(c)(11) stating that the public notification plan must include a description of significant modifications to the plan that were made since it was last updated.''
- § 122.38(b)(2)—Revised from ''A description of the location, treatment provided and receiving water for each CSO outfall'' to ''A description of the location and receiving water for each CSO discharge point, and, if applicable, any treatment provided.'' This change is intended to make clear that treatment information does not have to be provided if the CSO discharge does not receive treatment. This revision also includes replacing the word ''outfall'' with ''discharge point,'' which is explained above in Section IV.A.
- § 122.38(b)(3)—Revised ''The date, location, duration, and volume of each wet weather CSO discharge'' to ''The date, location, approximate duration, measured or estimated volume, and cause (*e.g.,* rainfall, snowmelt) of each wet weather CSO discharge.''
  - ○ By adding the words ''approximate'' and ''measured or estimated,'' the rule now clarifies that the same level of accuracy needed for the supplemental notice will suffice for the annual notice. It is EPA's expectation that the permittee will be able to simply summarize the date, location, duration, and volume information from the initial and supplemental notice in the annual notice.
  - ○ This edit also includes the addition of the ''cause'' of the discharge to the information required for the annual notice. EPA intended that the requirement of Section 425(b)(4)(A)(ii) to describe the cause of the discharge would be addressed by the requirement to include rainfall data for each CSO discharge listed in the annual notice. However, commenters pointed out that wet weather CSO discharges may also be caused by snowmelt, and the inclusion of daily precipitation data would not explain the cause of those discharges. EPA has therefore added ''cause (*e.g.,* rainfall, snowmelt)'' to the list of required information.
- § 122.38(b)(4)—Added ''cause'' to the list of required information for each dry weather CSO discharge. Similar to the explanation above, this revision ensures the final rule is consistent with the requirement of Section 425(b)(4)(A)(ii) to describe the cause of the discharge.
- § 122.38(b)(7)—Revised from ''Representative rain gauge data in total inches to the nearest 0.1 inch that resulted in a CSO discharge'' to ''Representative precipitation data in total inches to the nearest 0.1 inch that resulted in a CSO discharge, if precipitation was the cause of the discharge identified in (§ 122.38(b)(2)).''
  - ○ EPA replaced ''rain gauge data'' with ''precipitation data'' because commenters pointed out that rain gauge data may not be available for every CSO discharge, or in every community. By using broader terminology, EPA intends to allow communities the flexibility to use various data sources to meet this requirement. For example, some communities may choose to simply download daily precipitation data for their area from a publicly available source (*e.g.,* National Oceanic and Atmospheric Administration's (NOAA's) National Centers for Environmental Information's Climate Data Online Search (*https://www.ncdc.noaa.gov/cdo-web/search*)).
  - ○ As discussed above, one commenter pointed out that wet weather CSO discharges may be caused by snowmelt, and in those circumstances it would not be appropriate to be required to report on rainfall data since it was not affiliated with the discharge. EPA, therefore, added the qualifier at the end of the sentence ''if precipitation was the cause of the discharge.''
- § 122.38(b)(8)—Revised from ''A point of contact'' to ''Permittee contact information, if not listed elsewhere on the website where this annual notice is provided.'' Some commenters pointed out that the term ''A point of contact'' sounded like an individual person's name and contact information, and that that information changes too frequently to be appropriate. This was reworded to be clear that the contact information requirement is not for an individual person's contact information, but rather the permittee's contact information, so that the public has the information necessary to call the municipality with questions about the annual notice information. EPA added the latter part of the requirement to provide permittees the flexibility to provide this information elsewhere on their website, if it is not already included in an existing annual report that is being used to meet this annual notice requirement.

In addition to the above revisions, EPA made one additional revision to the

[8] EPA has not defined ''significant'' in the final rule in order to give communities discretion to highlight what they consider to be significant in their community-specific context. Some examples of the types of changes that EPA expects will be described in the summary include: Addition or removal of potentially affected public entities and Indian Tribes whose waters may be impacted by a CSO discharge, changes to the list of potentially impacted public access areas, changes to the method of notice to the public, changes to the protocols for notification to the public health department or other potentially affected public entities and Indian Tribes, or changes to the list of CSO discharge points for which notification is provided.

annual notice requirement to ensure the final rule was responsive to the Section 425 requirement to include ''annual publication requirements that list each treatment works from which the Administrator or the affected State receive a follow-up notice'' (425(b)(4)(B)). In the proposal, EPA included a requirement for electronic reporting at § 122.38(c). EPA received several comments that this requirement was inconsistent with the timing of the NPDES Electronic Reporting rule and also would be redundant with reporting requirements of the Electronic Reporting rule. The proposed electronic reporting at § 122.38(c) would have enabled EPA to query the database to generate summary level information about the Great Lakes Basin CSO permittees and publish that information on EPA's website. Rather than using electronic reporting to satisfy this requirement, EPA is requiring that Great Lakes Basin CSO permittees notify EPA annually of the availability of their annual notice. EPA can then use the information from the annual notice to update the list of Great Lakes Basin CSO permittees on its website to satisfy the requirements of Section 425(b)(4)(B). EPA has also required the contact information for the person responsible for maintaining the website (where the annual notice is posted) so that any issues with web links that do not work can be easily resolved. These revisions to the final rule are described in detail below:

- § 122.38(b)—Revised ''and shall provide the Director with notice of how the annual notice is available'' to ''and shall provide the Director and EPA with notice of how the annual notice is available.'' Also added a new sentence to follow that phrase in order to provide an email address by which the permittee may provide the notice to EPA.
- § 122.38(c)—Deleted the proposed rule electronic reporting requirement in full.

F. Revisions To Provide More Flexibility Regarding Model Re-Calibration

The proposed public notification plan requirements required larger communities (permittees with a population of 75,000 or more) that were using a model to estimate discharge volumes and durations to calibrate their models at least once every five years. Some commenters raised concern about the burden of requiring calibration of models at least once every five years. Since models do not necessarily require calibration if nothing changes in the system, the final rule will instead require that permittees with a population of 75,000 or more assess whether recalibration is necessary at least once every 5 years, and to recalibrate if it is determined that it is necessary. It is important for models to be accurately calibrated in order to determine when overflows are happening. However, EPA does not intend to unnecessarily burden municipalities if their models do not need to be calibrated every five years. EPA has therefore made the following revision:

- § 122.38(d)(9)—Revised ''must calibrate their model at least once every 5 years'' to ''must assess whether re-calibration of their model is necessary, and recalibrate if necessary, at least once every 5 years'' in final rule § 122.38(c)(9).

G. Revisions To Ensure Consultation With Public Health Departments Regarding Community-Specific Potentially Impacted Public Access Areas

In the final rule, EPA is requiring permittees to seek input from the public health department on what areas would be considered ''potentially impacted public access areas'' prior to submitting the public notification plan. This requirement addresses comments on the proposal suggesting that EPA define ''potentially affected public access areas.'' This terminology is used in rule sections on signage, notification of local public health department and other potentially affected public entities, notification of the public, and annual notice. Public access area types vary between communities and may depend on factors such as local ordinances, local culture, and geographic features. For instance, in one community, the public access areas may be defined to include swimming beaches and boat launches, while in another community they may include fishing streams, campgrounds, or marinas. Given this potential variability, it is more appropriate for each community to evaluate its own local circumstances and determine how best to define these public access areas for their CSO public notification plan, rather than for EPA to prescribe a general definition in the final rule to apply to all the Great Lakes Basin CSO communities. This is the type of information EPA expected would be discussed with public health departments when consulting with them on the public notification plan development (as would have been required in the proposed rule, and is required in the final rule), and this change explicitly calls this out to ensure it is discussed. The final rule provides:

- § 122.38(e)(1)(iii)—''Develop recommendations for areas that would be considered ''potentially impacted public access areas'' as referenced in 122.38(a)(1), (2), and (3).''

H. Revisions to the Implementation Schedule To Ensure Plans Are Completed Prior to Beginning Implementation of the Public Notification Requirements

In the final rule, EPA is requiring the public notification plan to be completed within six months and that the notification requirements be implemented within nine months. The three-month window between plan completion and implementation of the notification requirements allows communities time to ramp up for implementation of their notification plans after the plans have been fully developed, which includes all the outreach to seek input on the plan from local public health departments and other potentially affected public entities and Indian Tribes. In the proposed rule, plan implementation would have begun immediately at six months, when the plan was completed. Commenters indicated that additional time may be needed to ramp up implementation after plan completion, therefore EPA has made these changes in the final rule. EPA also added clarifying language to the annual notice provision to ensure the compliance date (which is the year following the effective date of the rule) is clear. EPA has therefore made the following revision:

- § 122.38(a)—Changed the implementation language from ''provide public notification of CSO discharges as described in this paragraph after August 7, 2018'' to ''provide public notification of CSO discharges as described in this paragraph after November 7, 2018.''
- § 122.38(b)—Inserted ''Starting in February 7, 2019,'' prior to ''By May 1 of each calendar year''.

I. Revisions To Add Flexibility for Small Permittees Who Manually Operate CSO Discharge Controls

EPA received comments identifying circumstances under which actions in small communities, to limit the impacts of the actual CSO discharge, may consume all available staff resources. Under these circumstances EPA wants to provide clarity that the permittee may take the necessary actions to address the CSO discharge prior to initiating the start of the four-hour notification window. To allow for such circumstances, EPA has revised the requirements as follows:

- § 122.38(a)(3)(i)—At the end of the provision, inserted a sentence that allows a permittee to identify in its public notification plan circumstances and physical action needed to limit the public health impacts of the CSO discharge by controlling the CSO discharge (including continuing to implement its existing practice of conducting inspections of CSO discharge points during the discharge), and if they identify that all available staff are required to complete this action, the four-hour notification window will commence upon completion of that action.

- § 122.38(c)(8)—Inserted, at the end of the provision, language that the plan shall include a description of circumstances under which the initial notification of the public may be delayed beyond four hours of the permittee becoming aware of the discharge, if the circumstances described above are met.

V. Final Rule Implementation

The public notification provisions are directly required regulatory requirements (independent of being implemented by permit conditions) until these conditions are incorporated into the NPDES permit of the Great Lakes Basin CSO permittee. EPA is using these two regulatory mechanisms to respond to Section 425(b)(5) of the 2016 Consolidated Appropriations Act direction that the notice and publication requirements described in the Act are to be implemented by ''not later than 2 years after the date of enactment'' of the Act.[9] The Agency recognizes that if NPDES permits were the only means of implementing these requirements, permits would have to be reissued with these requirements before they would take effect. Given the current status of CSO permits in the Great Lakes Basin, it would take over five years for the public notification requirements to be incorporated into all permits, far beyond the timeframe specified in Section 425. Making the public notification requirements directly applicable at first, followed by incorporating them into NPDES permits as they are issued, will enable all Great Lakes Basin CSO permittees to establish their public notification system within the same timeframe, and within the timeframe specified by Section 425(b)(5)(A).

The requirements of § 122.38(a) (signage and notification requirements) and § 122.38(b) (annual notice) are enforceable under the CWA prior to incorporation into a permit under CWA section 308 by operation of this rule. The requirement to develop a public notification plan consistent with § 122.38(c) and (d) is enforceable under CWA section 308. Once public notification requirements are incorporated into an NPDES permit, they are enforceable as a permit condition issued under CWA section 402.

The details and content of the public notification plan, however, are not enforceable under § 122.38(c) or as effluent limitations of the permit, unless the document or the specific details of the plan are specifically incorporated into the permit. Under the final rule, the contents of the public notification plan are instead intended to provide a road map for how the permittee would comply with the requirements of the permit (or with the requirements of § 122.38(a) and (b) prior to inclusion in the permit as a permit condition). Once the public notification requirements are incorporated into the permit as a permit condition, the plan may be changed based on adaptions made during the course of the permit term, thereby allowing the permittee to react to new technologies, circumstances and experiences gained during implementation and to make adjustments to its program as necessary to provide better public notification and better comply with the permit. This approach will allow the CSO permittee to modify and continually improve its approach during the course of the permit term without requiring the permitting authority to review each change as a permit modification.

A. Final Rule Requirements

1. Section 122.38 Requirements

As discussed in detail above, § 122.38 sets forth requirements that apply to all permittees with CSO discharges to the Great Lakes Basin. Under this rule, Great Lakes Basin CSO permittees are required to develop a public notification plan, after seeking and considering input from public health departments and other potentially affected public entities. The plan must be submitted to the Director and made available to the public by August 7, 2018. Section 122.38 also requires implementation of the signage requirements and notice to affected public entities and the public by November 7, 2018. The annual notice requirements apply beginning in February 7, 2019 (or an alternative date specified by the Director), which allows permittees time to collect data for the first year. As described in Section V.B.7, the Director may extend the compliance dates for notification and/or submittal of the public notification plan for individual communities if the Director determines the community needs additional time to comply in order to avoid undue economic hardship.

2. Required Permit Condition

EPA's rule will require the incorporation of public notice requirements into NPDES permits for CSO discharges to the Great Lakes Basin over time as they are issued and renewed. To effectuate this requirement, EPA is revising the permit application regulation requirements in § 122.21(j). EPA is adding § 122.21(j)(8)(iii), which requires the CSO permittees in the Great Lakes Basin to submit a public notification plan to the Director with its permit application (and any updates to its plan that may have occurred since the last plan submission). EPA is also adding a new standard condition at § 122.42(f) that applies to CSO permits, ensuring that CSO public notification requirements are incorporated into the NPDES permits for discharges to the Great Lakes Basin and updated over time as appropriate with each permit cycle. Public notification plans, submitted with subsequent permit applications, will reflect changes in collection systems and technology, as well as public notice practices. By requiring the Great Lakes Basin CSO permittee to include its updated public notice plan with its permit application, the Director will have the information he/she needs for including requirements for public notification in the permit when it is reissued.

While the rule requires that permits for CSO discharges to the Great Lakes Basin henceforth include public notification requirements, it also provides flexibility to allow NPDES permit writers to address the particular circumstances of each community (*e.g.,* size of community, differences in public access areas potentially impacted by a CSO discharge) in a manner that addresses local considerations. At the same time, however, this provision preserves the authority of the Great Lakes States to establish more stringent public notification requirements (see Section 425(b)(6) of the 2016 Consolidated Appropriations Act) and section 510 of the Clean Water Act. As outlined in § 122.42(f) of the rule, permits for CSO discharges within the Great Lakes Basin, at a minimum, will:

- Require implementation of the public notification requirements in § 122.38(a);
- Specify the information that must be included on discharge point signage;
- Specify discharge points and public access areas where signs are required;
- Specify the timing and minimum information for providing initial notification to local public health departments and other potentially affected entities, and the public;

[9] The *Consolidated Appropriations Act, 2016* was enacted on December 18, 2015.

- Specify the location of CSO discharges that must be monitored for volume and discharge duration and the location of CSO discharges where CSO volume and duration may be estimated;
- Require submittal of an annual notice in accordance with § 122.38(b); and
- Specify protocols for making the annual notice available to the public.

Section 402(q) of the CWA requires NPDES permits for discharges from combined sewers to ''conform'' to the 1994 CSO Control Policy. One of the ''Nine Minimum Controls'' identified in the Policy is that NPDES permits for CSO discharges require public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts. The permit condition required by this rule conforms to the 1994 CSO Control Policy's minimum control to provide the public with ''adequate notification'' and further provides specificity to better implement the public notification provision identified in the Policy. Including this provision in permits gives the Great Lakes States an opportunity to update and fine-tune public notice requirements to reflect continued development of the permittee's public notice approach, ensure consistency with State legislative and regulatory requirements for public notification, consider new technologies and be informed by public input. In addition, when public notification becomes a permit condition, the public will have the opportunity to comment on the public notification requirements during the permit process.

B. Implementation Considerations

1. Public Notification Plan Development

The final rule requires that Great Lakes Basin CSO permittees develop and submit to the Director a public notification plan by August 7, 2018 and again subsequently when the permittee files an application for permit renewal. In addition, prior to submitting the public notification plan, CSO permittees must seek and consider input from the local public health department (or if there is no local health department, the State health department) and potentially affected public entities and Indian tribes whose waters may be impacted by CSO discharges.

The public notification plans are intended to provide system-specific detail (*e.g.,* proposed monitoring locations, means for disseminating information to the public) describing the discharger's public notification efforts. Having a public notification plan in place will enhance communication with public health departments and other potentially affected public entities and Indian tribes whose waters may be impacted by the CSO discharge. The details within the plan will also assist NPDES permit writers in establishing corresponding public notification permit conditions. In addition, the plan will provide the public with a better understanding of the permittee's public notification efforts.

Section 425(b)(3)(A)(iii) of the 2016 Consolidated Appropriations Act provides that public notice for CSO discharges is to include a description of any public access areas impacted by the discharge. This rule requires that public notification plans identify which municipalities and other public entities may be affected by the permittee's CSO discharges. Potentially affected public entities whose waters may be impacted by the CSO discharge could include adjoining municipalities, public drinking water utilities, State and county parks and recreation departments. Such areas may have already been identified in the CSO permittee's LTCP, which should identify CSO discharges to sensitive areas.[10] In deciding which public entities and Indian tribes are ''potentially affected'' and should be contacted for their input, the Great Lakes Basin CSO permittee should evaluate:

- The location of the CSO discharge point and what users of that waterbody may exist in the surrounding region;
- The direction of flow in the receiving water and uses of that waterbody, or connected waterbodies, downstream of the CSO discharge point;
- The presence of public access areas near, or downstream of, the discharge point;
- The presence of drinking water supply systems near, or downstream of, the discharge point; and
- The presence of municipal entities, Indian tribes, and/or parks and recreation department lands near, or downstream of, the discharge point.

Local public health departments, public entities, and Indian tribes whose waters may be impacted by a CSO discharge are in a unique position to provide input on the timing, means and content of the public notification requirements addressed in this rule. Seeking input from these entities allows the permittee to reflect in the public notification plan the needs and preferences of these entities. Also, these groups can help inform decisions regarding the most appropriate means of communicating information to the public, taking into consideration specific populations in the community and their access to various electronic communication methods and social media. For example, if there is a segment of the population without access to cell phones or computers, or that would incur costs by receiving text notifications, the consulted entities may suggest other methods of communication that would be more appropriate to reach these groups (*e.g.,* radio broadcast, postings in public places, announcements through community flyers).

The plan will also describe how the volume and duration of CSO discharges will be either measured or estimated. If the Great Lakes Basin CSO permittee intends to use a model to estimate discharge volumes and durations, the plan is required to summarize the model and describe how the model was or would be calibrated. CSO permittees that are a municipality or sewer district with a population of 75,000 or more are required to assess whether re-calibration of their model is necessary, and recalibrate if necessary, at least once every 5 years.

2. Annual Notice

The final rule includes revisions to improve clarity and allow more flexibility regarding the annual notice requirements. The added flexibilities are intended to allow Great Lakes Basin CSO permittees that are already subject to existing State or local reporting requirements, which contain the same information as required in this rule's annual notice requirement, to use these reports to meet this rule's requirements. For example, New York State requires a Combined Sewer Overflow Annual Report which contains several of the components in the rule's annual notice requirements. Great Lakes Basin CSO permittees in New York may choose to provide a copy of this Annual Report along with a supplemental report or appendix that addresses the remaining components.

The flexibilities also allow a permittee, whose State permitting authority publishes an annual CSO report that contains the same information for a Great Lakes Basin CSO permittee as is required in this rule's annual notice requirement, to use the

[10] The CSO Policy clarifies EPA's expectation that a permittee's LTCP give the highest priority to controlling overflows to sensitive areas. The Policy provides that sensitive areas, as determined by the NPDES authority in coordination with State and Federal agencies, as appropriate, include designated Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds. (59 FR 18692).

State report to meet the rule's requirements. For example, in addition to existing annual reports permittees may be preparing, in at least one of the Great Lakes States (Michigan), the State prepares an annual CSO report summarizing information on all the Great Lakes Basin (and other) CSO permittees. Michigan's annual report provides the majority of the information that the final rule requires, and after discussions with the State, EPA anticipates that Michigan will make some minor adjustments to the data presented in its annual report to ensure it addresses all of the requirements for annual notice and thus enable Great Lakes Basin CSO permittees in Michigan to simply provide a link to the State annual report to meet their annual notice requirements.

3. Coverage of Partially Treated CSOs

The rule includes definitions of ''Combined Sewer System'' and ''Combined Sewer Overflows'' at § 122.2. The definition of combined sewer system is based on the description of combined sewer system found in the 1994 CSO Policy. The Policy provides that ''A combined sewer system (CSS) is a wastewater collection system owned by a State or municipality (as defined by § 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a Publicly Owned Treatment Works (POTW) Treatment Plant (as defined in § 403.3(p)).'' (59 FR 18689) The definition of combined sewer overflow also conforms to the description of CSO in the CSO Policy, which specifies that a ''CSO is the discharge from a CSS at a point prior to the POTW Treatment Plant.''

In the proposed rule preamble, EPA requested comment on whether it would be appropriate to establish alternative public notice requirements for CSO discharges that are treated to a specified level (*e.g.,* primary treatment plus disinfection). EPA also requested comment on whether the final regulations should provide additional flexibility for Great Lakes Basin CSO permittees to recommend in their public notification plan different public notification procedures for treated CSO discharges as compared to untreated CSO discharges. Some commenters (including the Indiana Department of Environmental Management (IDEM)) recommended that the final rule requirements only apply to untreated CSO discharges. However, many other commenters (including the New York State Department of Environmental Conservation (NYDEC) and Ohio EPA) supported the approach in the proposed rule where the requirements would apply to all CSO discharges. EPA decided to finalize the definition and scope of the rule as proposed, which treats untreated and partially treated CSOs alike for the purpose of public notice. As the preamble to the proposed rule explained (82 FR 4249), CSO discharges that only receive primary treatment prior to disinfection may have levels of viruses and other pathogens that are higher than discharges of wastewater that are treated by secondary treatment processes prior to disinfection, and they may also have higher levels of trihalomethanes and other disinfection byproducts.[11] There is no indication that Section 425 contemplated lesser notification to the public for partially treated discharges, and the CSO Policy treats untreated and partially treated discharges alike.

4. Precipitation-Related Events and Grouping CSO Notifications for Multiple Discharges

EPA intends that multiple discharges that result from the same precipitation-related event, even if they are not occurring at exactly the same time, may be grouped together in one public notification. EPA has revised the wording in the final rule to make this clearer, as is described in Section IV.B. EPA also revised the wording in the final rule to clarify that snowfall and snowmelt may also be the cause of a wet weather CSO discharge by changing ''precipitation event'' to ''precipitation-related event'', as described in Section IV.B.

EPA has not further defined ''event'' in this rule. Because permittees have been tracking and reporting CSO discharge data for many years to meet permit requirements and commitments made in long-term control plan and related documents, EPA expects that the Director and the permittee have already established what constitutes separate CSO events and precipitation events for reporting purposes. It is not EPA's intention to change that approach with this rulemaking; rather, the purpose of this rulemaking is to ensure information about CSO discharges is provided to the public, public health departments, and other affected entities.

5. Initial Notification Timing

The rule requires that an initial notice be provided to the local public health departments and other potentially affected entities as well as the public ''as soon as possible, but no later than four (4) hours after becoming aware by monitoring, modeling or other means that a CSO discharge has occurred.'' EPA selected four hours because it is prompt enough to allow the public to make informed decisions regarding areas where they would visit and recreate before doing so; while it is also a long enough amount of time to allow permittees to initiate notification processes.

By using language that combines a definitive deadline (*i.e.,* no later than four (4) hours after becoming aware) with language that requires notification ''as soon as possible,'' EPA provides flexibility to minimize the increased burden of the requirement as much as possible. One important consideration was the existing staffing hours at some POTWs. From speaking to State Directors and hearing from permittees in comment letters and the public listening session, EPA is aware that not all permittees have staff monitoring for combined sewer overflows at all hours. While EPA is accounting for some additional burden on permittees because of this rule (including in the form of staff resources), it is not EPA's intention for permittees to significantly change staff hours, or hire new staff, in order to increase monitoring for CSO discharge. Rather, EPA expects that the initial notification would begin at the time that the permittee *becomes aware* of the CSO discharge. EPA therefore used the wording ''after becoming aware'' to trigger the beginning of the four-hour timeframe. For example, if a CSO discharge occurred on a Sunday evening at 8:00 p.m. but the permittee did not become aware of the discharge until staff reported to work at 7:00 a.m. on Monday morning, the four-hour timeframe would begin at 7:00 a.m. on Monday and the permittee would need to provide the initial notice as soon as possible but no later than 11 a.m. on Monday.

In consideration of circumstances in which a small community has limited staff (*e.g.,* one person is required to

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[11] As EPA noted in the preamble to the proposed rule, traditional bacteria indicators that are used in State water quality standards may not be the best indicators of viral and other pathogens associated with fecal contamination. CSO discharges that only receive primary treatment prior to disinfection and that meet water quality standards based on indicator bacteria may have levels of viruses and other pathogens that are higher than discharges of wastewater that are treated by secondary treatment processes prior to disinfection. This is because bacteria respond to water treatment processes and environmental degradation processes differently than viruses. In addition, particles in wastewater may shield pathogens from disinfection. CSO discharges that only receive primary treatment prior to disinfection may also have higher levels of trihalomethanes and other disinfection byproducts due to the higher concentration of chlorine needed to disinfect and potential interactions with particles in the wastewater.

handle all response activities), and that staff member must take a physical action to limit the public health impacts of a CSO discharge (including continuing to implement its existing practice of conducting inspections of CSO discharge points during the discharge), EPA has added a flexibility to the final rule to ensure that the permittee is able to complete that physical action before focusing on sending out the public notification. This change is described in Section IV.I.

6. CSO Discharge Modeling/Monitoring

EPA expects that most permittees already have a system in place by which they monitor, model, or otherwise estimate when CSO discharges have occurred. This approach is often established in the LTCP or other planning or operational document. EPA expects that most communities would use that same approach and/or data to inform the notification provided in response to this rule. The rule does not specifically require additional monitoring beyond what the CSO permittee already has in place for compliance with the current CSO Policy and other existing regulations; therefore, permittees would not need to purchase additional monitoring equipment or establish an expensive model.

As noted in the preamble to the proposed rule (82 FR 4233), EPA anticipates that some communities may choose to estimate when CSO discharges may occur based on weather forecasts and provide notification in advance of a precipitation-related event. From a review of State-issued permits and additional State requirements pertaining to CSOs, EPA found that all seven States within the Great Lakes Basin require permittees to report the occurrence of a CSO discharge. Some States also require permittees to report CSO discharge duration, CSO discharge start and end times, and precipitation data associated with each CSO discharge. By using historic CSO discharge and precipitation data, along with certain system and service area characteristics that are already known and readily available, a predictive approach provides a simplified method to estimate a precipitation threshold that can be expected to cause a CSO discharge on a per discharge point basis. This method can be used to provide timely notification to the public, local public health departments, and other potentially affected public entities. EPA considered that there may be smaller communities that would like to provide public notification using a predictive approach, but they may not know the precipitation threshold at which they should trigger the advanced notice. For these communities, EPA has included a memo to the record describing how one might establish a precipitation threshold that can be used to meet the initial public notification requirements of the rule (see the ''Predictive Approach Memo for the Great Lakes Basin'' in the rulemaking docket). EPA's memo suggests correlating historic CSO occurrence data with precipitation data obtained from rain gauges near CSO discharge points, if available, or readily available data from the National Oceanic and Atmospheric Administration's National Centers for Environmental Information Climate Data Online Search (*https://www.ncdc.noaa.gov/cdo-web/search*) to determine a reasonable precipitation threshold that would be expected to cause a CSO discharge.

7. Extending Compliance To Avoid Economic Hardship

Section 425(b)(5)(A) of the 2016 Appropriations Act provides that the notice and publication requirements of the provision must be implemented within two years, unless the EPA Administrator determines the community needs additional time to comply in order to avoid undue economic hardship. All of the Great Lakes States are authorized to administer the NPDES program. Because EPA is implementing Section 425 as part of the NPDES permit program, this determination may be made by the Director or by the Administrator. In EPA's view, the State as the NPDES authority is in a better position to evaluate the economic conditions and financial capability of the permittee as they have worked with individual communities to ensure implementation of their LTCPs.

The rule requires that the Great Lakes Basin CSO permittee must submit a public notification plan to the Director of the NPDES program by August 7, 2018. The Great Lakes Basin CSO permittee is required to comply with the public notice requirements of § 122.38 within nine months, and in the next calendar year in the case of annual notification, unless the Director specifies a later date to avoid economic hardship. Under § 122.38(e), the Director may extend the compliance dates for public notification under § 122.38(a), annual notice under § 122.38(b), and/or public notification plan submittal under § 122.38(c) for individual communities if the Director determines the community needs additional time to comply in order to avoid undue economic hardship. The rule requires the Director to notify the Regional Administrator of the extension and the reason for the extension. In addition, the Director is required to post on its website a notice that includes the name of the community and the new compliance date(s).

The requirement to post this information on the Director's website provides the public with information on any exceptions that have been made to the compliance date. Because financial resources will vary among communities due to community size, annual revenue, staffing and consultant resources, other program expenses (*e.g.,* existing long-term control plan commitments) and other factors, EPA is not establishing specific criteria to define economic hardship in the final rule. Instead, EPA is providing the Director with the flexibility to evaluate each community's specific circumstances to decide if an extension to the compliance date is needed.

VI. Incremental Benefits and Costs of the Rule

EPA anticipates there will likely be public health benefits from decreased bodily exposure to sewer overflows but did not quantify these benefits. EPA views these new notification requirements as a minimal increase in existing costs that permittees are already incurring due to existing permit requirements that conform to the CSO Control Policy codified in CWA 402(q).

A. Benefits of the Rule

This rule is expected to protect public health by ensuring timely notification to the public and to public health departments, public drinking water facilities and other potentially affected public entities, including Indian tribes. It provides additional specificity beyond existing public notification requirements to ensure timely and consistent communication to the public regarding combined sewer overflows in the Great Lakes Basin. It also acknowledges the significant technology changes that have occurred since the original requirements were developed in 1994 which allow direct public access to real-time information. Timely notice may allow the public and affected public entities to take steps to reduce the public's potential exposure to pathogens associated with human sewage, which can cause a wide variety of health effects, including gastrointestinal, skin, ear, respiratory, eye, neurologic, and wound infections. Although EPA has not quantified these benefits, the expected reduction in human exposure to pathogens may provide a net public health benefit from this rule. See ''Benefits of Abating

Sanitary Sewer Overflows (SSOs)'' in the rulemaking docket for a discussion of some of the many potential benefits that can be expected from reducing exposure to raw sewage discharges.

Because of these expected public health benefits, EPA has chosen to implement the requirements with a two-stage approach which ensures that the benefits of the rule can begin to accrue as quickly as possible, rather than delaying these public health benefits until future permit renewals which for some permittees could be as long as five years away (or even more if a permit is administratively continued by the permitting authority).

The rule also improves transparency and accountability to the public about the presence and magnitude of CSO discharges in their community. Many permittees already report to their Director on the occurrence, duration, volume, and cause of CSO discharges; however, that information is often difficult for communities to find and interpret. Through a complete, consistent, and easily accessible annual notice that is shared with the public, community members can gain perspective on this important water pollution issue and they are able to see progress that is being made to reduce discharges.

B. Costs of the Rule

The ''Analysis of Costs and Executive Orders'' (available in the rulemaking docket) estimates the incremental costs of requiring CSO permittees that discharge to the Great Lakes Basin to provide public notification of CSO discharges. Table 3 summarizes the estimated incremental costs for the rule.

TABLE 3—ANNUAL INCREMENTAL COSTS

[Average of first three years]

Category	Number of entities per category	Labor costs	Capital/start-up/O&M costs	Total
CSO permittees with a population of less than 10,000	54	$110,000	$30,600	$140,000
CSO permittees with a population of between 10,000 and 50,000	69	140,000	26,600	167,000
CSO permittees with a population of more than 50,000	35	130,000	13,300	143,000
States	7	7,000	0	7,000
Totals	165	387,000	70,500	457,000

Note: Cost values in table are rounded to three significant figures.

The average incremental cost per CSO permittee is about $2,850 per year and the total annual incremental cost on all CSO permittees is about $450,000.

The cost analysis assumes that costs will be borne by Great Lakes Basin CSO permittees in the form of one-time implementation activities that would occur within one to two years, once-per-year activities including an annual notice, and ongoing activities that would occur during and after CSO discharges. The cost analysis also accounts for costs to State agencies, mainly in the review of CSO permittee plans and reports.

VII. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any revisions made in response to interagency review have been documented in the docket for this action. In addition, EPA prepared an analysis of the potential costs associated with this action. This analysis, ''Analysis of Costs and Executive Orders,'' is summarized in Section VI and is available in the docket.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 regulatory action. Details on the estimated costs of this final rule can be found in EPA's ''Analysis of Costs and Executive Orders,'' which is available in the docket. Also see Section VI.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2562.01. The ICR is summarized here; a complete copy can be found in the docket. The information collection requirements are not enforceable until OMB approves them.

As discussed in section V.A of this document, NPDES permits for CSO discharges to the Great Lakes Basin will require permittees to provide public notification to ensure that the public receives adequate notice of CSO occurrences and CSO impacts. The information burden associated with this provision is approved in ''Information Collection Request for NPDES Program (Renewal),'' OMB Control No. 2040–0004, EPA ICR No. 0229.21. EPA has developed an additional analysis to provide a better, updated estimate of the public notification requirements. The analysis used to develop these estimates is described in ''ICR Supporting Statement, Information Collection Request: Public Notification Requirements for CSOs in the Great Lakes Basin,'' EPA ICR number 2562.01. Key estimates and assumptions in the analysis include:

- 69% percent of existing discharge points (outfalls) for all CSO permittees have already installed signs and they are being maintained;
- Over 60% of the CSO permittees already have a system for developing estimates of the occurrence and volume of discharges from CSO discharge points;
- Each Great Lakes Basin CSO permittee already operates a website that can be modified to provide the public with notification of a CSO event;
- Larger CSO communities may have access to listserv technology;
- Electronic technology significantly reduces the burden of providing initial and supplemental notification to the public and to local public health departments and other affected public entities;
- Much of the effort in developing public notification plans is included in burden estimates for the individual public notification components in the proposal. The activities attributed to the

burden for the public notification plan include preparation of the document describing the public notification activities.

• The burdens on the NPDES authority for permit renewals are applied to one-fifth of all Great Lakes Basin CSO permits within each State beginning in year 2 of the ICR to account for the five year permit term.

The public notification requirements in this rule are designed to alert the public and public health departments, and other potentially affected entities of CSO discharges in a more wide-spread and timely manner than is currently practiced. The notification requirements which involve distribution of CSO discharge related information (*e.g.,* CSO discharge location, receiving waterbody, time started, time ended, volume) to the public and affected local governmental agencies would enable potentially affected parties to take action that may help prevent serious health effects that may otherwise occur if they were to remain unaware of the occurrence of CSO discharges.

Respondents/affected entities: The ICR covers information that must be provided by operators of combined sewer systems (Great Lakes Basin CSO permittees) that discharge within the watershed of the Great Lakes Basin. In addition, the ICR covers information burdens of the seven NPDES authorized States that are implementing the program and the estimated 158 public health departments that are consulting on the public notification plan.

Respondent's obligation to respond: Compliance with the notification requirements would be mandatory. Requirements for public notification of CSO discharge are part of the ''nine minimum controls'' established as part of EPA's CSO Control Policy. Section 425 of the Consolidated Appropriations Act of 2016 (Pub. L. 114–113) requires EPA to work with the Great Lakes States to establish these public notice requirements.

Estimated number of respondents: EPA has identified 158 CSO communities that discharge to the Great Lakes Basin, seven State NPDES permitting authorities, and 158 public health departments.

Frequency of response: Responses include one-time implementation activities, such as signage, activities that occur once per year, such as providing annual notice, and ongoing activities that would occur during and after CSO discharge events.

Total estimated burden: EPA estimates that the burden of implementing the rule would be 10,301 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: EPA estimates that the rule would cost $457,000 per year during the three year ICR period. This is the total annual incremental cost for all 158 Great Lakes Basin CSO permittees and seven State NPDES authorities. The average incremental cost per CSO permittee is about $2,850 per year and the average incremental cost per State NPDES authority is about $1,000.

EPA 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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small governmental jurisdictions. The Agency has determined that 123 (78%) of the 158 communities discharging CSOs to the Great Lakes Basin are governmental jurisdictions with a population of less than 50,000 and thus can be classified as small entities. EPA evaluated the potential impact on annual revenue that these small entities may experience. Nearly all of the small communities (121 of 123 communities) are expected to experience an impact of less than 1% of annual revenue. Two communities may experience an impact of greater than 1% of annual revenue (one potentially experiencing an impact slightly over 1% and the other approximately 2%). Details of this analysis are presented in the Analysis of Costs and Executive Orders which is available in the docket.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538. EPA has conducted a cost analysis examining the potential burden to State, tribal and local governments. Details of this analysis are presented in the Analysis of Costs and Executive Orders which is available in the docket. EPA estimates that the costs of the rule to States, tribes and local governments will be well below $100 million per year. In addition, EPA compared the estimated annualized cost of the rule and revenue estimates for small local governments using four estimates of revenue data. The annualized compliance cost as a percentage of annual government revenues is below 1%. EPA concludes that the impact of the rule is very unlikely to reach or exceed 1% of small local government revenue.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

The rule includes a requirement for CSO permittees to notify the public of CSO discharges. This requirement includes the development of a public notification plan and the release of an annual notice that includes monitoring data. The incremental impact to State permitting authorities is estimated to be approximately $1,000 annually per State. The incremental impact to local permittees may range from a total of $1,000 to $4,000 annually per CSO permittee, depending on the number of CSO events and preparation time for the annual notice. Details of this analysis are presented in ''Analysis of Costs and Executive Orders,'' which is available in the docket (Docket ID No. EPA–HQ–OW–2016–0376 *http://www.regulations.gov*).

Keeping with the spirit of E.O. 13132 and consistent with EPA's policy to promote communications between EPA and State and local governments, and Section 425's direction to work with the States, EPA met with State and local officials throughout the process of developing the proposed rule and received feedback on how potential new regulatory requirements would affect them. EPA engaged in extensive outreach via conference calls to affected States to enable officials of affected States to have meaningful and timely input into the development of the proposed and final rule. EPA also held a public listening session and solicited written comments from the public and impacted stakeholder groups, including affected municipalities, to inform the development of the public notice proposed requirements. See Docket ID No. EPA–HQ–OW–2016–0376 to the *Federal eRulemaking Portal: http://www.regulations.gov.*

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

This action does not have tribal implications as specified in Executive Order 13175 since it does not have a direct substantial impact on one or more federally recognized tribes. No tribal governments are authorized NPDES permitting authorities and none of the combined sewer systems subject to this rule are located on Indian nation lands.

The rule would address the way in which municipalities share information with the public, public health departments, and potentially impacted communities (including Indian tribes) about CSOs in the Great Lakes Basin. EPA therefore evaluated the proximity of CSSs that would be subject to the rule in relation to Indian lands. EPA identified six CSO permittees with the potential to affect waters near four Indian nations in New York State:

• Seneca Nation of Indians (SNI): The Dunkirk WWTP is located south of the Cattaraugus Reservation. The Buffalo Sewer Authority and Niagara Falls WWTP are located close to SNI lands within the city of Niagara Falls, NY and Buffalo, NY (where the Seneca casinos are located).

• Tuscarora Nation (TN): The Tuscarora Nation lands are located directly between the Niagara Falls WWTP and Lockport WWTP but not on the Niagara River or Eighteen Mile Creek.

• Tonawanda Seneca Nation (TSN): The Medina WWTP is located 10 miles north of the Tonawanda Seneca Nation lands.

• St. Regis Mohawk Tribe (SRMT): Any of the three WWTP plants along the St. Lawrence River would be of concern to the Mohawks at Akwesasne. SRMT is directly impacted by the Massena WWTP as the St. Lawrence River goes directly thru the heart of Akwesasne, the St. Regis Mohawk Tribe's reservation lands.

Consistent with the EPA Policy on *Consultation and Coordination with Indian Tribes,*[12] EPA conducted outreach to tribal officials during the development of this action. EPA contacted the above mentioned tribes through outreach conducted by EPA's Office of Environmental Justice to ensure they were aware of the opportunity to provide public comments on the proposed rule. In addition, when EPA held the public listening session while the proposed rule was under development, EPA conducted outreach to tribes to ensure awareness of the public listening session, and the associated opportunity to provide written comments to the Agency. In addition, the rule requires Great Lakes Basin CSO permittees to consult with potentially affected Indian Tribes whose waters may be impacted by a CSO discharge prior to submitting the public notification plan. This requirement ensures that needs of tribes using potentially impacted waters are considered in terms of timing of notification, the type of information that is provided, and the means by which public notification is communicated.

[12] *https://www.epa.gov/sites/production/files/2013–08/documents/cons-and-coord-with-indian-tribes-policy.pdf.*

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The rule would, in some cases, increase public awareness of CSO discharges to the Great Lakes Basin, including information about public use areas such as beaches that may be impacted by contaminated CSO discharges, and by doing so could decrease health risks for children, infants, and adults.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The rule requires CSO permittees to notify the public of CSO discharges.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA determined that the human health or environmental risk addressed by this action would not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action affects the way in which Great Lakes Basin CSO permittees communicate information regarding CSO discharges to the public. It does not change any current human health or environmental risk standards.

However, because the rule would address the way in which information about CSO discharges is communicated to the public, EPA did reach out to environmental justice organizations to specifically solicit input on what may be the best approaches to reaching environmental justice communities with this information. Prior to the public listening session on September 14, 2016, EPA contacted over 800 environmental justice stakeholders through the Office of Environmental Justice Listserv, to ensure they were aware of the listening session and the opportunity to provide written input to the Agency through the public docket. EPA again reached out via this Listserv to ensure environmental justice stakeholders were aware of the public comment period for the proposed rule.

In addition, the rule requires the Great Lakes Basin CSO permittee to consult with local public health departments and potentially affected public entities when developing the public notification plan. These consultations may alert the Great Lakes Basin CSO permittee to specific environmental justice community considerations regarding the best ways to effectively communicate this information.

L. Congressional Review Act

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 122

Environmental protection, Combined sewer overflow, Public notification, Reporting, Water pollution.

40 CFR Part 123

Environmental protection, Combined sewer overflow, Public notification, Reporting, Water pollution.

Dated: December 18, 2017.

E. Scott Pruitt,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR parts 122 and 123 as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. In § 122.2, add the definitions ''Combined sewer overflow (CSO)'', ''Combined sewer system (CSS)'', and ''Great Lakes Basin'' in alphabetical order to read as follows:

§ 122.2 Definitions.

* * * * *

Combined sewer overflow (CSO) means a discharge from a combined sewer system (CSS) at a point prior to the Publicly Owned Treatment Works (POTW) Treatment Plant (defined at § 403.3(r) of this chapter).

Combined sewer system (CSS) means a wastewater collection system owned by a State or municipality (as defined by section 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a Publicly Owned Treatment Works (POTW) Treatment Plant (as defined at § 403.3(r) of this chapter).

* * * * *

Great Lakes Basin means the waters defined as ''Great Lakes'' and ''Great Lakes System'' as those terms are defined in § 132.2 of this chapter.

* * * * *

■ 3. In § 122.21, add paragraph (j)(8)(iii) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(j) * * *

(8) * * *

(iii) *Public notification plan for CSO discharges to the Great Lakes Basin.* Each permittee authorized to discharge a combined sewer overflow to the Great Lakes Basin as defined in § 122.2 must submit a public notification plan developed in accordance with § 122.38 as part of its permit application. The public notification plan shall describe any significant updates to the plan that may have occurred since the last plan submission.

* * * * *

■ 4. Add § 122.38 to read as follows:

§ 122.38 Public notification requirements for CSO discharges to the Great Lakes Basin.

(a) All permittees authorized to discharge a combined sewer overflow (CSO) to the Great Lakes Basin (''Great Lakes Basin CSO permittee'') must provide public notification of CSO discharges as described in this paragraph (a) after November 7, 2018. Public notification shall consist of:

(1) *Signage.* (i) The Great Lakes Basin CSO permittee shall ensure that there is adequate signage where signage is feasible at:

(A) CSO discharge points (unless the permittee demonstrates to the Director that no public access of, or public contact with, the receiving water is expected); and

(B) Potentially impacted public access areas.

(ii) At a minimum, signs shall include:

(A) The name of the Great Lakes Basin CSO permittee;

(B) A description of the discharge (*e.g.,* untreated human sewage, treated wastewater) and notice that sewage may be present in the water; and

(C) The Great Lakes Basin CSO permittee contact information, including a telephone number, NPDES permit number and CSO discharge point number as identified in the NPDES permit.

(iii) The Great Lakes Basin CSO permittee shall perform periodic maintenance of signs to ensure that they are legible, visible and factually correct.

(iv) Where a permittee has before August 7, 2018 installed a sign at a CSO discharge point or potentially impacted public access area that is consistent with State requirements, the sign is not required to meet the minimum requirements specified in paragraph (a)(1)(ii) of this section until the sign is replaced.

(2) *Notification of local public health department and other potentially affected public entities.* (i) As soon as possible, but no later than four (4) hours after becoming aware by monitoring, modeling or other means that a CSO discharge has occurred, the Great Lakes Basin CSO permittee shall provide initial notice of the CSO discharge to the local public health department (or if there is no local health department, to the State health department), any potentially affected public entities (such as municipalities, public drinking water utilities, State and county parks and recreation departments), and Indian Tribes whose waters may be impacted. Such initial notice shall, at a minimum, include the following information:

(A) The water body that received the discharge(s);

(B) The location of the discharge(s) and identification of the public access areas potentially impacted by the discharge. Where CSO discharges from the same system occur at multiple locations during the same precipitation-related event, the Great Lakes Basin CSO permittee may provide a description of the area in the waterbody where discharges are occurring and identification of the public access areas potentially impacted by the discharge, and the permittee is not required to identify the specific location of each discharge;

(C) The date(s) and time(s) that the discharge(s) commenced or the time the permittee became aware of the discharge(s) or when discharges are expected to occur;

(D) Whether, at the time of the notification, the discharge(s) is continuing or has ended. If the discharge(s) has ended, the approximate time that the discharge ended; and

(E) A point of contact for the CSO permittee.

(ii) Within seven (7) days after becoming aware by monitoring, modeling or other means that the CSO discharge(s) has ended, the Great Lakes Basin CSO permittee shall provide the following supplemental information to the public health department and affected public entities and Indian Tribes receiving the initial notice under paragraph (a)(2)(i) of this section unless the information had been provided in an earlier notice:

(A) The measured or estimated volume of the discharge(s). Where CSO discharges from the same system occur at multiple locations during the same precipitation-related event, the Great Lakes Basin CSO permittee may provide an estimate of the cumulative volume discharged to a given waterbody; and

(B) The approximate time that the discharge(s) ended.

(3) *Notification of the public.* (i) As soon as possible, but no later than four (4) hours after becoming aware by monitoring, modeling or other means that a CSO discharge has occurred, the Great Lakes Basin CSO permittee shall provide public notification of CSO discharges. The Great Lakes Basin CSO permittee shall provide public notification of CSO discharges electronically, such as by text, email, social media alerts to subscribers or by posting a notice on its public access website, and, if appropriate, by other means (*e.g.,* newspaper, radio, television). If a permittee's public notification plan identifies circumstances and physical action needed to limit the public health impacts of the CSO discharge by controlling the CSO discharge (including continuing to implement its existing practice of conducting inspections of CSO discharge points during the discharge), and all available staff are required to complete this action, the four-hour notification window will commence upon completion of that action.

(ii) At a minimum, the notice shall include:

(A) The water body that received the discharge(s);

(B) The location of the discharge(s) and identification of the public access areas potentially impacted by the discharge. Where CSO discharges from the same system occur at multiple locations during the same precipitation-related event, the Great Lakes Basin CSO permittee may provide a description of the area in the waterbody where discharges are occurring and identification of the public access areas potentially impacted by the discharge, and the permittee is not required to identify the specific location of each discharge;

(C) The date(s) and time(s) that the discharge(s) commenced or the time the permittee became aware of the discharge(s); and

(D) Whether, at the time of the notification, the discharge(s) is continuing or has ended. If the discharge(s) has ended, the approximate time that the discharge(s) ended.

(iii) Within seven (7) days after becoming aware by monitoring, modeling or other means that the CSO discharge(s) has ended, the Great Lakes Basin CSO permittee shall update the electronic notice with the following information unless the information had been provided in an earlier notice:

(A) The measured or estimated volume of the discharge(s). Where CSO discharges from the same system occur at multiple locations during the same precipitation-related event, the Great Lakes Basin CSO permittee may provide an estimate of the cumulative volume discharged to a given waterbody; and

(B) The approximate time that the discharge(s) ended, unless this information was provided in an earlier notice.

(b) *Annual notice.* Starting in February 7, 2019, by May 1 of each calendar year (or an alternative date specified by the Director), any permittees authorized to discharge a CSO to the Great Lakes Basin shall make available to the public an annual notice describing the CSO discharges from its discharge point(s) that occurred in the previous calendar year and shall provide the Director and EPA with notice of how the annual notice is available. Notice to EPA shall be in the form of an email to *NPDES_CSO@epa.gov* containing a link to the annual notice and the contact information (name, title, phone number, email) of the person responsible for maintaining the website, or alternative information about how the annual notice is available if it is not on a website; if the permittee is emailing the Director with this information, the permittee may copy EPA on that email to meet this requirement. Permittees that are owners or operators of a satellite collection system with one or more CSO discharge points shall provide the annual notice to the public and a copy of the annual notice to the operator of the POTW treatment plant providing treatment for its wastewater. For permittees whose State permitting authority has published or will publish an annual report containing all of the below minimum information (listed at paragraphs (b)(1) through (8) of this section) about the Permittee, the Permittee may choose to make available the State-issued annual report in order to meet this requirement. If permittees have existing report(s) that are written annually that collectively contain all of the below minimum information (listed at paragraphs (b)(1) through (8) of this section), then the Permittee may choose to make that/those report(s) publicly available in order to meet this requirement. At a minimum, the annual notice shall include:

(1) A description of the location and receiving water for each CSO discharge point, and, if applicable, any treatment provided;

(2) The date, location, approximate duration, measured or estimated volume, and cause (*e.g.,* rainfall, snowmelt) of each wet weather CSO discharge that occurred during the past calendar year. Where CSO discharges from the same system occur at multiple locations during the same precipitation-related event, the Great Lakes Basin CSO permittee may provide an estimate of the cumulative volume discharged to a given waterbody;

(3) The date, location, duration, volume, and cause of each dry weather CSO discharge that occurred during the past calendar year;

(4) A summary of available monitoring data for CSO discharges from the past calendar year;

(5) A description of any public access areas potentially impacted by each CSO discharge;

(6) Representative precipitation data in total inches to the nearest 0.1 inch that resulted in a CSO discharge, if precipitation was the cause of the discharge identified in (§ 122.38(b)(2));

(7) Permittee contact information, if not listed elsewhere on the website where this annual notice is provided; and

(8) A concise summary of implementation of the nine minimum controls and the status of implementation of the long-term CSO control plan (or other plans to reduce or prevent CSO discharges), including:

(i) A description of key milestones remaining to complete implementation of the plan; and

(ii) A description of the average annual number of CSO discharges anticipated after implementation of the long-term control plan (or other plan relevant to reduction of CSO overflows) is completed.

(c) *Public notification plan.* The Great Lakes Basin CSO permittee shall develop a public notification plan that describes how the Great Lakes Basin CSO permittee will ensure that the public receives adequate notification of CSO occurrences and CSO impacts. The Great Lakes Basin CSO permittee must provide notice of the availability of the plan, for instance on the permittee's website (if it has a website), and periodically provide information on how to view the notification plan, such as in bill mailings and by other appropriate means. The Great Lakes Basin CSO permittee must submit its public notification plan to the Director by August 7, 2018 and as part of a permit application under § 122.21(j)(8)(iii). The plan must:

(1) Identify the location of signs required under paragraph (a)(1) of this section and the location of any CSO discharge point where a sign is not provided. Where a sign has not been provided at a CSO discharge point, the plan shall explain why a sign at that location is not feasible or was otherwise determined to not be necessary.

(2) Describe the message used on signs required under paragraph (a)(1) of this section;

(3) Describe protocols for maintaining signage (*e.g.,* inspections at set intervals);

(4) Identify (with points of contact) the municipalities, public drinking water supplies, public parks with water access, Indian Tribe(s), and describe other sensitive area(s) identified in the permittee's long-term CSO control plan, that may be impacted by the permittee's CSO discharges;

(5) Summarize significant comments and recommendations raised by the local public health department under paragraph (d) of this section;

(6) Identify other affected public entities and Indian Tribes whose waters may be impacted by a CSO discharge that were contacted under paragraph (d) of this section and provide a summary of their significant comments and recommendations;

(7) Describe protocols for the initial and supplemental notice to public health departments and other public entities;

(8) Describe protocols for the initial and supplemental notice to the public;

this shall include a description of circumstances under which the initial notification of the public may be delayed beyond four hours of the permittee becoming aware of the discharge, which shall only include circumstances where a physical action is needed to limit the public health impacts of a CSO discharge by controlling the CSO discharge (including continuing to implement its existing practice of conducting inspections of CSO discharge points during the discharge), and all available staff are required to complete this action, and, therefore, are not available to initiate the initial notification until this action is complete;

(9) Describe, for each CSO discharge point, how the volume and duration of CSO discharges shall be either measured or estimated for the purposes of complying with paragraphs (a)(2)(ii)(A), (a)(3)(iii)(A) and (b)(2) and (3) of this section. If the Great Lakes Basin CSO permittee intends to use a model to estimate discharge volumes and durations, the plan must summarize the model and describe how the model was or will be calibrated. CSO permittees that are a municipality or sewer district with a population of 75,000 or more must assess whether re-calibration of their model is necessary, and recalibrate if necessary, at least once every 5 years;

(10) Describe protocols for making the annual notice described in paragraph (b) of this section available to the public and to the Director; and

(11) Describe significant modifications to the plan that were made since it was last updated.

(d) *Seek input on public notification plan.* Prior to submitting the public notification plan, or resubmitting under § 122.21(j)(8)(iii), the Great Lakes Basin CSO permittee must:

(1) Seek input from the local public health department (or if there is no local health department, the State health department), to:

(i) Develop recommended protocols for providing notification of CSO discharges to the public health department. The protocols will specify which CSO discharges are subject to notification, the means of notification, timing of notification and other relevant factors.

(ii) Develop recommendations for providing notice to the general public of CSO discharges electronically and by other appropriate means.

(iii) Develop recommendations for areas that would be considered ''potentially impacted public access areas'' as referenced in § 122.38(a)(1), (2), and (3).

(2) Seek input from other potentially affected public entities and Indian Tribes whose waters may be impacted by a CSO discharge.

(3) Consider the recommendations of the public health department and other potentially affected entities in developing protocols in its public notification plan for providing notification of CSO discharges to the public health department and potentially affected public entities and Indian Tribes.

(e) *Extending compliance to avoid undue economic hardship.* The Director may extend the compliance dates in paragraphs (a), (b), and (c) of this section for individual communities if the Director determines the community needs additional time to comply in order to avoid undue economic hardship. Where the Director extends the compliance date of any of these requirements for a community, the Director shall notify the Regional Administrator of the extension and the reason for the extension. The Director shall post on its website a notice that includes the name of the community and the new compliance date(s). The notice shall remain on the Director's website until the new compliance date.

■ 5. In § 122.42, add paragraph (f) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(f) *Public notification requirements for CSO discharges to the Great Lakes Basin.* Any permit issued authorizing the discharge of a combined sewer overflow (CSO) to the Great Lakes Basin must:

(1) Require implementation of the public notification requirements in § 122.38(a);

(2) Specify the information that must be included on discharge point signage, which, at a minimum, must include those elements in § 122.38(a)(1)(ii);

(3) Specify discharge points and public access areas where signs are required pursuant to § 122.38(a)(1)(i);

(4) Specify the timing and minimum information required for providing initial and supplemental notification to:

(i) Local public health department and other potentially affected entities under § 122.38(a)(2); and

(ii) The public under § 122.38(a)(3).

(5) Specify the location of CSO discharges that must be monitored for volume and discharge duration and the location of CSO discharges where CSO volume and duration may be estimated; and

(6) Require submittal of an annual notice in accordance with § 122.38(b);

(7) Specify protocols for making the annual notice under § 122.38(b) available to the public.

PART 123—STATE PROGRAM REQUIREMENTS

■ 6. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 7. In § 123.25, add paragraph (a)(47) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(47) For a Great Lakes State, § 122.38.

* * * * *

[FR Doc. 2017–27948 Filed 1–5–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 17–172]

Expansion of Intergovernmental Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts revisions to its rules governing the Intergovernmental Advisory Committee (Committee or IAC), which advises the Commission on a range of telecommunications issues affecting local, county, state, and Tribal interests, to expand it from 15 members to 30 members. The IAC has been an important source of information and guidance to the Commission over the past 20 years. The rule change will enhance the IAC's role by allowing for a greater diversity of viewpoints representing our municipal, county, state, and Tribal partners throughout the country.

DATES: Effective January 8, 2018.

FOR FURTHER INFORMATION CONTACT: Carmen Scanlon, Consumer and Governmental Affairs Bureau, at: (202) 418–0544; email: *Carmen.Scanlon@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 17–172, adopted December 13, 2017, released December 20, 2017. The full text of this document will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference

Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The full text of this document and any subsequently filed documents in this matter may also be found by searching ECFS at: *http://apps.fcc.gov/ecfs/*.

Final Paperwork Reduction Act of 1995 Analysis

The Order does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

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

Synopsis

1. The IAC, formerly known as the Local and State Government Advisory Committee (LSGAC), was created in 1997 to provide guidance to the Commission on issues of importance to state, local, county, and Tribal governments, as well as to the Commission. The Committee is currently composed of 15 elected and appointed officials of those governmental entities.

2. The Committee has provided ongoing advice and information to the Commission on a broad range of telecommunications issues in which state, local, county, and Tribal governments share ''intergovernmental responsibilities or administration'' with the Commission, including cable and local franchising, public rights-of-way, facilities siting, universal service, barriers to competitive entry, and public safety communications.

3. The Commission has often found over the years that an IAC membership of just 15 does not often capture the varied perspectives of our regulatory partners across the country. The IAC works best and its advice helps the Commission the most when it fully represents perspectives of rural, urban, and suburban jurisdictions from various geographic areas throughout the United States.

4. By expanding its membership to 30, the Commission better enable the IAC's ability to represent perspectives and viewpoints from all relevant governmental entities and sectors, and to further promote valuable, comprehensive, and balanced input that more comprehensively reflects the views and expertise of our regulatory partners. The Commission's experience with other advisory committees of similar size shows this to be the case.

5. The Commission continue to believe that IAC representation from each category of state, local, county, and Tribal government is important. Thus, the number of members from each category set forth in our current rules shall now serve as a minimum threshold. The Committee will now consist of 30 members, of which at least four shall be elected municipal officials, at least two shall be elected county officials, at least one shall be a local government attorney, at least one shall be an elected state executive, at least three shall be elected state legislators, at least one shall be a public utilities or public service commissioner, and at least three shall be Native American Tribal representatives. The Commission's approach will give the Commission flexibility to expand the number and diversity of viewpoints from these sectors while ensuring none is under-represented.

Ordering Clauses

6. The rule modifications adopted constitute rules of agency organization, procedure and practice. Therefore, the modification of § 0.701 of the Commission's rules is not subject to the notice and comment and effective date provisions of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(3)(A), (d).

7. Pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), subpart G, § 0.701 of the Commission's rules, 47 CFR 0.701, modified as set forth in the Order, is adopted.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 is revised to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

■ 2. Amend § 0.701 by revising paragraph (b) to read as follows:

§ 0.701 Intergovernmental Advisory Committee.

* * * * *

(b) *Membership.* The IAC will be composed of 30 members (or their designated employees), with a minimum of: Four elected municipal officials (city mayors and city council members); two elected county officials (county commissioners or council members); one elected or appointed local government attorney; one elected state executive (governor or lieutenant governor); three elected state legislators; one elected or appointed public utilities or public service commissioner; and three elected or appointed Native American tribal representatives. The Chairman of the Commission will appoint members through an application process initiated by a Public Notice, and will select a Chairman and a Vice Chairman to lead the IAC. The Chairman of the Commission will also appoint members to fill any vacancies and may replace an IAC member, at his discretion, using the appointment process. Members of the IAC are responsible for travel and other incidental expenses incurred while on IAC business and will not be reimbursed by the Commission for such expenses.

* * * * *

[FR Doc. 2018–00015 Filed 1–5–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 14–50, 09–182, 07–294, 04–256, and 17–289; FCC 17–156]

2014 Quadrennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, an *Order on Reconsideration* repeals and modifies several of the Commission's broadcast ownership rules. Specifically, this document repeals the Newspaper/Broadcast Cross-Ownership Rule, the Radio/Television Cross-Ownership Rule, and the attribution rule for television joint sales agreements. This document also revises the Local Television Ownership Rule to eliminate the Eight-Voices Test and to modify the

Top-Four Prohibition to better reflect the competitive conditions in local markets. This document provides a favorable presumption for waiver of the Local Radio Ownership Rule's market definitions as to transactions in certain embedded markets. Lastly, this document rejects requests to change the definition of Shared Service Agreements (SSAs) and the requirement that commercial television stations disclose SSAs by placing the agreements in each station's online public inspection file. In addition, the document finds that the record supports adoption of an incubator program to promote ownership diversity. The *Order on Reconsideration* grants in part and denies in part the Petitions for Reconsideration filed separately by the National Association of Broadcasters (NAB), Nexstar Broadcasting, Inc. (Nexstar), and Connoisseur Media LLC (Connoisseur).

DATES: Effective February 7, 2018 except for the amendment to § 73.3613, which contains information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these changes.

FOR FURTHER INFORMATION CONTACT: Benjamin Arden, Industry Analysis Division, Media Bureau, FCC, (202) 418–2605. For additional information concerning the PRA information collection requirements contained in the *Second Report and Order,* contact Cathy Williams at (202) 418–2918, or via the internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration,* in MB Docket Nos. 14–50, 09–182, 07–294, 04–256, and 17–289; FCC 17–156, was adopted on November 16, 2017, and released on November 20, 2017. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at *https://apps.fcc.gov/edocs_public/.* The complete document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Introduction

1. In this *Order on Reconsideration* (*Order*), the Commission grants in part and denies in part, as set forth in this *Order,* various petitions for reconsideration of the *Second Report and Order* (81 FR 76220, Nov. 1, 2016, FCC 16–107, rel. Aug. 25, 2016). Specifically, the Commission (1) eliminates the Newspaper/Broadcast Cross-Ownership Rule; (2) eliminates the Radio/Television Cross-Ownership Rule; (3) revises the Local Television Ownership Rule to eliminate the Eight-Voices Test and to modify the Top-Four Prohibition to better reflect the competitive conditions in local markets; (4) declines to modify the market definitions relied on in the Local Radio Ownership Rule, but provides a presumption for certain embedded market transactions; (5) eliminates the attribution rule for television joint sales agreements (JSAs); and (6) retains the disclosure requirement for shared service agreements (SSAs) involving commercial television stations. In addition, the Commission finds that the present record supports adoption of an incubator program to promote ownership diversity; however, the structure and implementation of such a program requires further exploration.

II. Background

2. Congress requires the Commission to review its broadcast ownership rules every four years to determine whether they are necessary in the public interest as the result of competition and to repeal or modify any regulation the Commission determines to be no longer in the public interest. On August 10, 2016, the Commission adopted the *Second Report and Order* (released on August 25, 2016) to resolve both the 2010 and 2014 quadrennial review proceedings, as well as to address various issues related to the attribution of television JSAs, diversity initiatives, and SSAs.

3. The *Second Report and Order* largely retained the existing broadcast ownership rules, reinstated the previously vacated Television JSA Attribution Rule, and adopted a definition of SSAs and a disclosure requirement for SSAs involving commercial television stations. The Commission also committed to explore various diversity-related proposals in the record, while declining to adopt other proposals, including an incubator program. Several parties sought reconsideration of various aspects of the *Second Report and Order.* NAB petitioned the Commission to reconsider its decisions regarding the Local Television Ownership Rule, television JSA attribution, SSA disclosure, the Newspaper/Broadcast Cross-Ownership Rule, the Radio/Television Cross-Ownership Rule, and the rejection of NAB's proposal to create an incubator program to encourage diversity. On January 24, 2017, the Office of Communication, Inc. of the United Church of Christ (UCC), the Media Alliance, the National Organization for Women Foundation, the Communications Workers of America, the Newspaper Guild, the National Association of Broadcast Employees and Technicians, Common Cause, the Benton Foundation, Media Council Hawai'i, the Prometheus Radio Project, and the Media Mobilizing Project (UCC et al.) filed a motion to strike and dismiss the NAB Petition on the grounds that the petition improperly evades the strict 25-page limit on reconsideration petitions by using a prohibited, undersized font for footnotes and inserting a substantial portion of its argument into those footnotes in violation of 47 CFR 1.49(a). The motion also alleges that NAB's summary was well over twice the permissible length, and improperly contains additional arguments in violation of 47 CFR 1.49(c). In reply, NAB states that it did not intend to evade any Commission rules and offers to refile if the Commission is concerned about UCC et al.'s allegations. In addition, NAB cites precedent that the Commission has considered previously the merits of an application for review well in excess of the 25-page limit and notes that parties adverse to NAB have pleadings in the proceeding that violate 47 CFR 1.49 but have been considered on the merits by the Commission. The Commission denies UCC et al.'s motion. The Commission finds that, to the extent that NAB's pleading does not precisely conform to 47 CFR 1.49, no party has been prejudiced, and the public interest is best served by considering NAB's arguments. The Commission reminds parties, however, to be mindful of the requirements of § 1.49.

4. Nexstar also challenged the Local Television Ownership Rule and the attribution of television JSAs, while Connoisseur challenged an aspect of the Local Radio Ownership Rule related to embedded markets.

III. Media Ownership Rules

A. Newspaper/Broadcast Cross-Ownership Rule

1. Introduction

5. Upon reconsideration, the Commission repeals the Newspaper/

Broadcast Cross-Ownership (NBCO) Rule in its entirety. The Commission's decision to repeal the rule means that all newspapers (print or digital) now will be allowed to combine with television and radio stations within the same local market, subject to the remaining broadcast ownership rules and any other applicable laws, including antitrust laws. The Commission finds that prohibiting newspaper/broadcast combinations is no longer necessary to serve the goal of promoting viewpoint diversity in light of the multiplicity of sources of news and information in the current media marketplace and the diminished voice of daily print newspapers. Whatever the limited benefits for viewpoint diversity of retaining the rule, in today's competitive media environment, they are outweighed by the costs of preventing traditional news providers from pursuing cross-ownership investment opportunities to provide news and information in a manner that is likely to ensure a more informed electorate. As such, the NBCO Rule no longer serves the public interest and must be repealed pursuant to Section 202(h).

2. Background

6. In the *Second Report and Order,* the Commission affirmed its previous findings that an absolute ban was overly restrictive, but concluded that some newspaper/broadcast cross-ownership restrictions continued to be necessary to promote viewpoint diversity. It retained the general prohibition on common ownership of a broadcast station and a daily print newspaper in the same local market, but adopted minor changes to the rule to accomplish what the Commission called a modest loosening of the absolute ban. The Commission: (1) modified the geographic scope of the rule to update its analog parameters and to reflect more accurately the markets that newspapers and broadcasters actually serve; (2) adopted an explicit exception for failed and failing broadcast stations and newspapers; and (3) created a case-by-case waiver standard whereby the Commission would grant relief from the rule if the applicants showed that a proposed merger would not unduly harm viewpoint diversity in the market. The Commission declined to eliminate the newspaper/radio cross-ownership restriction from the NBCO Rule after finding that, despite its earlier tentative conclusion that radio stations typically are not primary outlets for local news, radio stations nonetheless provide a meaningful amount of local news and information such that lifting the restriction could harm viewpoint diversity. In addition, the Commission explained that, although the rule may benefit ownership diversity incidentally, the agency's purpose in retaining the rule was not to promote minority or female ownership. NAB petitioned the Commission to reconsider its retention of the NBCO Rule.

3. Discussion

7. The Commission finds that the NBCO Rule must be repealed because it is not necessary to promote the Commission's policy goals of viewpoint diversity, localism, and competition, and therefore does not serve the public interest. Because the Commission is repealing the NBCO Rule on other grounds, it is unnecessary to address arguments that the rule should be repealed on competition grounds. Similarly, it is unnecessary to reach arguments that ownership does not influence viewpoint because the Commission is eliminating the rule on the ground that, even if ownership might influence viewpoint in certain circumstances, the NBCO Rule is not necessary to foster viewpoint diversity (nor to promote localism or competition). The parties that support reconsideration of the NBCO Rule argue that the modifications adopted in the *Second Report and Order* were insufficient and that the rule is obsolete and should be eliminated. The Commission agrees. The Commission affirms its longstanding determination that the rule does not advance localism and competition goals, and finds that it is no longer necessary to promote viewpoint diversity, the rule's only remaining policy justification. Although elimination of the rule could theoretically diminish viewpoint diversity to a limited extent due to the loss of an independent voice as a result of any newspaper/broadcast combination, the Commission finds that this impact will be mitigated by the multiplicity of alternative sources of local news and information available in the marketplace and the overall financial decline of newspapers. In addition, the Commission finds that this concern is outweighed by the countervailing benefits to consumers that can result from newspaper/broadcast combinations. Finally, based on the Commission's review of the record, the Commission finds that eliminating the rule will have no material effect on minority and female broadcast ownership. Accordingly, the Commission grants the request that it eliminate the NBCO Rule.

8. *The Marketplace Has Changed Dramatically.* On reconsideration, the Commission finds that its decision to retain the NBCO Rule failed to acknowledge the current realities of the media marketplace. In 1975, the broadcast industry was still relatively young, but it had found its footing, owing in part to the role that newspaper/broadcast cross-ownership had played in its success. Supporters of common ownership claimed that joint ownership of newspapers and broadcast stations made possible the early development of FM and TV service even though these pioneering stations often had to be operated at a loss. In adopting the cross-ownership rule, the Commission acknowledged the pioneering role of newspapers in the broadcast medium but found that common ownership with newspapers was no longer a critical factor for broadcaster success. The Commission observed that, on the whole, the broadcast industry had matured to the point that new entrants could be expected to have an interest in pursuing station ownership. It concluded that the special reason for encouraging newspaper ownership, even at the cost of a lessened diversity, was no longer generally operative in the way it once was. The Commission understood its obligation to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation as it is, not was.

9. That same obligation now requires the Commission to eliminate the NBCO Rule. Not only have the means of accessing content changed dramatically, but the media marketplace has seen an explosion in the number and variety of sources of local news and information since the Commission adopted the NBCO Rule in 1975. Opponents of the rule point to this increase and argue that the NBCO Rule has become obsolete as a result.

10. From the 6,197 full-power radio stations and 851 full-power television stations that existed in the late 1960s, the Commission's latest broadcast totals place the number of full-power radio stations at 15,512 and full-power television stations at 1,775. Contrary to the Commission's conclusion in the *Second Report and Order,* the fact that the number of full-power broadcast stations has more than doubled represents a significant increase that should be considered when evaluating the continued necessity of the NBCO Rule. It was improper for the Commission to dismiss data submitted by Bonneville International Corp. and The Scranton Times, L.P., demonstrating a substantial increase in

the number of broadcast services simply because it represented a nationwide increase which may have been spread unevenly across individual local markets without citing any evidence to support this notion. In addition, the Commission should have taken into account the number of low-power broadcast stations, which, as of June 2017, includes 417 Class A television stations; 1,968 low-power television (LPTV) stations; and 1,966 low-power FM (LPFM) stations—none of which services existed when the rule was adopted. This situation is a stark contrast to the state of affairs in 1975, when the changed circumstances in the broadcasting industry that prompted adoption of the NBCO Rule included a trend in which the number of channels open for new licensing had diminished substantially.

11. Equally, if not more significantly, NAB cites evidence of the growing prevalence of independent digital-only news outlets with no print or broadcast affiliation, many with a local or hyperlocal focus. Thirteen years ago, the Third Circuit agreed with the Commission that the record suggested that cable and the internet contribute to viewpoint diversity; the panel members simply disagreed about the degree and importance of this trend at that time. Since then, however, the picture has changed significantly. Even the U.S. Supreme Court recently recognized the importance of the internet and social media as sources of news and information for many Americans. As this trend continues to gain momentum and new voices proliferate, the dominance of traditional news outlets diminishes. Although the record contains some evidence that local television stations and newspapers may still be consumers' primary sources of local news and information, the Commission finds that it improperly discounted the role of non-traditional news outlets, including internet and digital-only, in the local media marketplace.

12. The Commission concluded in the *Second Report and Order* that online outlets do not serve as a substitute for newspapers and broadcasters providing local news and information. As noted below, this conclusion does not appear to reflect the record evidence as to how the internet has transformed the American people's consumption of news and information, the direction of current trends in this regard, and in particular how those trends have affected younger adults. At a minimum, the record reflects studies that reject the premise that people have a primary or single source for most of their local news and information. Rather, the picture revealed by the data is that of a richer and more nuanced ecosystem of community news and information than researchers have previously identified, in which Americans turn to a wide range of platforms to get local news and information. Thus, the contributions of such outlets cannot be dismissed out of hand as the existence of these non-traditional news outlets nevertheless results in greater access to independent information sources in local markets. Furthermore, the Commission failed to acknowledge adequately evidence in the record demonstrating the emergence of online outlets that offer local content and have no affiliation with traditional broadcast or print sources.

13. Numerous studies cited in the record establish the emergence and growth of alternative sources of local news and information, including digital-only local news outlets as well as other online sources of local news and information. For example, according to a 2014 Pew Research study, out of 438 digital news sites examined, more than half had a local focus, with the typical outlet described as focused on coverage of local or even neighborhood-level news. Even by 2011, a Pew study confirmed that while newspapers remain popular sources for some such information, 69 percent of those surveyed said that if their local newspaper no longer existed, it would not have a major impact on their ability to keep up with information and news about their community. By 2016, Pew reported that just 20 percent of U.S. adults often get news from print newspapers, with even steeper declines in particular demographics—only 5 percent of those aged 18 through 29, and only 10 percent of those aged 30 through 49. According to the earlier Pew study, for the 79 percent of Americans who are online, the internet is the first or second most important source for 15 of the 16 local topics examined. Nearly half of adults (47 percent) use mobile devices to get local news and information, and for none of Pew's topics did more than 6 percent of respondents say they depended on the website of a legacy news organization. Among adults under age 40, the web ranks first or ties for first for 12 of the 16 local topics asked about. Furthermore, in the *Second Report and Order,* the Commission too readily dismissed cable news programming as primarily targeted to a wide geographic audience, without considering that most of the major cable operators carry locally-focused cable news networks in parts of their footprint.

14. On reconsideration, the Commission finds that the record clearly demonstrates that the wealth of additional information sources available in the media marketplace today, apart from traditional newspapers and broadcasters, strongly supports repealing the NBCO Rule. These dramatic and ongoing changes in the media industry negate concerns that repealing the NBCO Rule will harm viewpoint diversity. The Commission does not perceive a need for the rule in light of the current trends toward greater consumer reliance on these alternative sources of local news and information. The Commission's failure to account properly for the multiplicity of news and information sources available in the current media marketplace factored heavily in its unjustified retention of the NBCO Rule.

15. *The Decline of the Newspaper Industry Has Diminished its Voice.* In addition, restrictions on common ownership of daily print newspapers and broadcast stations are no longer justified to protect viewpoint diversity as the strength of daily print newspapers has declined significantly since 1975. In the *Second Report and Order,* the Commission failed to credit properly the evidence in the record regarding the challenges facing the newspaper industry and the resulting effects on the ability of print newspapers to serve their readers. Rather than merely modifying the rule's waiver standard and adjusting its carve-outs, the Commission should have acknowledged the diminution of newspapers' voices and concluded that the time has come to eliminate the rule altogether.

16. In light of the long decline of the newspaper industry, the loss of an independent daily newspaper voice in a community will have a much smaller impact on viewpoint diversity than would have been the case in 1975. In addition, as discussed below, repeal of the NBCO Rule will permit newspaper/broadcast combinations that can strengthen local voices and thus enable the combined outlets to better serve their communities.

17. *The NBCO Rule Prevents Combinations that Could Benefit Localism.* The Commission repeatedly has recognized that the NBCO Rule does not promote localism and actually may hinder it by preventing local news outlets from achieving efficiencies by combining resources needed to gather, report, and disseminate local news and information. The Commission nevertheless retained newspaper/broadcast cross-ownership restrictions in order to promote its goal of viewpoint

diversity. Because the NBCO Rule is no longer necessary to foster viewpoint diversity, and the rule can be repealed without harming the public interest, the potential benefits to localism arising from common ownership finally can accrue. The Commission expects that eliminating the NBCO Rule will allow both broadcasters and newspapers to seek out new sources of investment and operational expertise, increasing the quantity and quality of local news and information they provide in their local markets.

18. There is ample evidence in the record that eliminating the rule will help facilitate such investment and enable both broadcasters and newspapers to better serve the public. For example, Cox Media Group, LLC (Cox) asserts that collaboration and cost-sharing between its television station and its newspaper in Dayton, Ohio, helped them be the first to report on what became a national story about the failures of the Veterans Administration to provide adequate medical services. In addition, Cox previously provided several examples showing how the combination of resources across its commonly owned newspaper, television, and radio properties in both Dayton and Atlanta, Georgia, allowed them to report on breaking news stories more quickly and accurately and to also provide more thorough coverage of events, such as political elections, that involve numerous interviews and in-depth issue reporting. Cox asserts that the common ownership of multiple outlets has enabled its media properties ''to vastly improve service at a time when the economics of the newspaper and broadcast business would seem to dictate the opposite.'' In addition, the News Media Alliance (NMA) provided numerous examples of the benefits to local programming involving cross-owned media outlets in various markets. For example, a cross-owned newspaper/television combination in Phoenix combined resources to report on stories such as the shooting of Congresswoman Gabrielle Giffords and 18 others in Tucson, the Yarnell Hill fire that killed 19 firefighters and destroyed more than 100 homes, and a massive dust storm. In South Bend, Indiana, a commonly owned local newspaper, television station, and two radio stations regularly worked together on issues of local significance, such as uncovering harmful substances in drinking water, hosting town-hall meetings for political candidates and local officials, sending a reporter to Iraq, commemorating the 150th anniversary of the local Studebaker factory, providing weather information, and covering Notre Dame sports. NMA also cited prior Commission studies for the proposition that, on average, a cross-owned television station produces more local news and more coverage of local and state political candidates than comparable non-cross-owned television stations. NMA pointed to the finding in one Commission study that cross-owned television stations, on average, air 50 percent more local news than non-cross-owned stations. The Commission's Media Ownership Study 4 also found that the total amount of local news aired by all television stations in the market may be negatively correlated with newspaper/broadcast cross-ownership. As noted in the *FNPRM* (79 FR 29010, May 20, 2014, FCC 14–28, rel. Apr. 14, 2014), however, the study authors cautioned that this finding was imprecisely measured and not statistically different from zero. An earlier Commission study cited by NMA found that cross-owned television stations aired between seven to ten percent more local news, which still represents a meaningful increase in the average amount of local news aired on cross-owned television stations. This study also found that cross-owned television stations, on average, provide roughly 25 percent more coverage of local and state politics. The Commission has acknowledged that prior Commission studies have found that cross-owned radio stations are more likely to air news and public affairs programming and are four to five times more likely to have a news format than a non-cross-owned station. Comments in this proceeding bear that out, providing anecdotal evidence, such as that offered by Morris Communications, which explained that its radio stations in Topeka, Kansas, and in Amarillo, Texas, were able to invest more heavily in local news production and in news staff because of their cross-ownership with the local newspaper. As the Commission discussed in the *Second Report and Order,* the record contains support for the proposition that newspaper/broadcast combinations can promote localism by creating efficiencies through the sharing of expertise, resources, and capital that can lead to a higher quantity and quality of local news programming. The Commission has long accepted that proposition, but it concluded in its previous decisions that some restrictions remained necessary to promote viewpoint diversity. The Commission concludes now that the potential public interest benefits of permitting newspaper/broadcast combinations outweigh the minimal loss of viewpoint diversity that may result from eliminating the rule. With the elimination of the NBCO Rule these localism benefits can finally begin to materialize.

19. In light of the well-documented and continuing struggles of the newspaper industry, the efficiencies produced by newspaper/broadcast combinations are more important than ever. A report in February 2017 examining the health of small newspapers was cautiously optimistic about the future of publications with a community or hyperlocal focus but acknowledged that their battle for survival will not be easy and will require new approaches and strategies that take advantage of their niche position. Removing the regulatory obstacle of this outdated rule will help financially troubled newspapers carry on their important work. While the Commission recognizes that cost-savings gained from common ownership will not necessarily be invested in the production of local news, by allowing newspapers and broadcasters to collaborate and combine resources, the Commission's action in this *Order* creates new opportunities for local broadcasters and newspapers to better serve the local news and information needs of their communities.

20. *The NBCO Rule Must be Eliminated.* The Commission's decision to repeal the rule reflects the situation as it currently is, not as it was more than 40 years ago. Whereas the Commission determined in 1975 that newspaper/broadcast combinations were no longer necessary to support the growth of the broadcast industry and that the interest in viewpoint diversity required separate ownership of newspapers and broadcast licenses, the Commission now determines that this restriction is no longer necessary to promote viewpoint diversity and can potentially harm localism, and that removing the restriction best serves the public interest.

21. Indeed, even to the extent that eliminating the rule would permit transactions that would reduce the number of outlets for news and information in local markets, the markets will continue to have far more voices than when the rule was enacted. The modern media marketplace abounds with new, non-traditional voices, the number of local broadcasters has increased dramatically, and the strength of local newspapers relative to other media has diminished as a result of the difficulties facing the industry and the rise of new voices. And the Commission expects the number of

voices to continue to grow, as the internet, in particular, has lowered the barriers to entry and provided a publicly accessible platform for individuals and organizations to serve the news and information needs of their local communities. Furthermore, eliminating the NBCO Rule will permit efficient combinations that will allow broadcasters and newspapers to combine resources and enable them to better serve their local communities. On balance, therefore, the Commission concludes that retaining the rule does not serve the public interest.

22. The Commission consistently has recognized that changing circumstances in the marketplace warrant a retreat from a total ban; accordingly, the Commission has attempted to impose various limits on the rule through the years. The Commission's overall direction has been toward a growing acknowledgment that the rule is not always necessary to promote viewpoint diversity and should be modified to reflect changes in the marketplace. The Commission's action in this *Order* is simply the logical extension of this acknowledgment in response to the radically altered media marketplace.

23. As noted in the *2002 Biennial Review Order* (68 FR 46286, Aug. 5, 2003, FCC 03–127, rel. July 2, 2003), the Commission must consider the impact of [its] rules on the strength of media outlets, particularly those that are primary sources of local news and information, as well as on the number of independently owned outlets. Maximizing the number of independent voices does not further diversity if those voices lack the resources to create and publish news and public information. In *Prometheus Radio Project* v. *FCC,* 373 F.3d 372 (3d Cir. 2004) (*Prometheus I*), the court affirmed the Commission's finding in the *2002 Biennial Review Order* that the NBCO Rule was overbroad and should be relaxed. In the *2006 Quadrennial Review Order* (73 FR 9481, Feb. 21, 2008, FCC 07–216, rel. Feb. 2008), the Commission took into consideration the imperiled state of the newspaper industry, recounting statistics and data showing that the shrinking newspaper industry had suffered circulation declines, staff layoffs, shuttered news bureaus, flat advertising revenues, rising operating costs, and falling stock prices. These hardships influenced the Commission's finding that the existing ban on newspaper/broadcast combinations continued to be overly restrictive.

24. The newspaper industry had not recovered when the Commission began its 2010/2014 ownership review and, indeed, the hardships continued to mount. In its 2010 *NOI* (75 FR 33227, June 11, 2010, FCC 10–92, rel. May 25, 2010), the Commission described newspapers' declining circulation and advertising revenues and asked whether relaxing the rule would help newspapers to survive. In the *FNPRM,* the Commission expressed concern for the future of newspapers but disagreed with the suggestion that the NBCO Rule should be repealed or relaxed on that basis alone. The Commission was reluctant to jeopardize viewpoint diversity in local markets in response to assertions that the rule limited opportunities for traditional media owners to expand their revenues. Now, however, the Commission concludes that the continuance of the NBCO Rule is not necessary or appropriate to preserve or promote viewpoint diversity under Section 202(h). The Commission anticipates that both newspapers and broadcasters will benefit from the rule's repeal, as will, ultimately, the public, as discussed above.

25. The Commission recognized in the *FNPRM* that the NBCO Rule does not promote viewpoint diversity when a newspaper is in financial distress, and the *FNPRM* proposed an exception to the rule for failed and failing merger applicants. In the *Second Report and Order,* the Commission adopted that exception and explained that allowing such mergers is not likely to harm viewpoint diversity. In addition, the Commission incorporated into the rule a case-by-case waiver standard for markets of all sizes to account for merger situations that do not pose an undue risk to viewpoint diversity.

26. On reconsideration, the Commission finds that its modifications to the NBCO Rule in the *Second Report and Order* were inadequate. Given the current state of the newspaper industry, it might very well be too late to save a newspaper that would qualify as failed or failing under the exception adopted in the *Second Report and Order.* The Commission's goal should be to keep local voices strong, not to maintain artificial barriers that prevent efficient combinations and then wait until newspapers reach a failed or failing state before providing regulatory relief. In addition, the Commission's case-by-case waiver standard was wholly insufficient because the Commission failed to provide any meaningful guidance on how it would evaluate each waiver request. An exception or a waiver standard may be appropriate when a rule is sound and exceptional circumstances exist, but such mechanisms do not redeem an unsound rule, as the Commission finds this one to be.

27. In addition, the modified rule inexplicably left in place a definition of daily newspaper that is outdated and illogical in that it applies only to newspapers printed at least four days a week. The distinction between print newspapers and digital outlets has become blurred as some newspapers reduce the number of days a week they publish in print and rely more heavily on their online distribution. Indeed, many publishers today continuously update the content of the online versions of their newspapers as they compete with bloggers and social media that rapidly produce and update their own content. Applying the NBCO Rule to newspapers only if they are printed in hardcopy at least four days per week ignores the reality that what defines a newspaper has changed and that many consumers access the paper's news and information over the internet throughout the day. A newspaper's influence should no longer be measured by how many mornings a week it is delivered to the doorstep. Doing so would exacerbate the perverse incentive for a newspaper seeking to combine with a broadcaster to reduce its print editions in order to avoid triggering the rule. Given the current media marketplace and the way consumers access content, the rule's reliance on a newspaper's printing schedule makes no sense.

28. As the modified rule adopted in the *Second Report and Order* is not necessary to promote the public interest, the Commission cannot retain it consistent with Section 202(h). the Commission emphasizes that the rule's repeal in no way reflects a lessening of the importance of viewpoint diversity as a Commission policy goal. Rather, the Commission concludes that the rule is no longer necessary to promote viewpoint diversity.

29. The Commission finds also that the NBCO Rule should be eliminated rather than relaxed. The Commission's previous attempts to relax the rule demonstrate the difficulty in designing an approach that works effectively for the range of market circumstances across the country. Paradoxically, previous attempts at relaxing the rule arguably threatened the greatest harm in small markets where cross-ownership may be needed most to sustain local news outlets. The record does not provide an adequate basis for distinguishing areas where application of the rule could serve the public interest from those where it would not. There was significant opposition to the modified rule proposed by the Commission in this proceeding, and only one commenter proposed a

detailed alternative approach, and the Commission explained why it declined to adopt it. Thus, the record does not support a narrowed restriction. Moreover, as discussed above, the Commission finds that it would be outdated and illogical to adopt a rule based on the distinction between print newspapers and digital outlets. Indeed, any modified rule that continues to single out newspapers of any kind cannot be sustained.

30. In light of the significantly expanded media marketplace and the overall state of the newspaper industry, and the Commission's conclusion that the rule is not necessary to promote viewpoint diversity, competition, or localism, and may hinder localism, the Commission concludes that immediate repeal is required by Section 202(h) and will permit combinations that would benefit consumers. The Commission's decision will enable all broadcasters and newspapers to attract new investment in order to preserve and expand their local news output.

31. In addition, though the Commission finds that the entire NBCO Rule must be eliminated, the Commission finds that the record provides an additional and independent justification for eliminating the restriction on newspaper/radio combinations. Opponents of this aspect of the rule argue that evidence in the record does not provide adequate support for the Commission's conclusion that radio is a sufficiently meaningful source of local news and public interest programming such that allowing newspaper/radio combinations could harm viewpoint diversity. The Commission agrees. As discussed in the following section, the Commission is eliminating the Radio/Television Cross-Ownership Rule based on its finding that the diminished contributions of local broadcast radio stations to viewpoint diversity, together with increasing contributions from new media outlets and the public interest benefits of radio/television combinations, no longer justify continued radio/television cross-ownership regulation. For the same reasons relating to viewpoint diversity contributions of radio and the proliferation of alternative media voices, as well as the countervailing public interest benefits of newspaper/radio combinations, the Commission concludes that the restriction on newspaper/radio combinations is not in the public interest and must be eliminated pursuant to Section 202(h).

32. *Minority and Female Ownership.* The Commission finds that repealing the NBCO Rule will not have a material impact on minority and female ownership. After seeking public comment on this topic a number of times, the Commission expressed its view that the rule does not promote or protect minority and female ownership. Not only have past debates on this issue not persuaded the Commission that the ban on newspaper/broadcast combinations is necessary to protect or promote minority and female ownership, no arguments were made in this reconsideration proceeding that would lead the Commission to conclude otherwise. On the contrary, two organizations representing minority media owners seek relief from the rule's restrictions. Their comments directly refute arguments in the record that repealing the rule will harm small broadcasters, including minority and women broadcasters, because they are at a competitive disadvantage compared to large media outlets. As the Commission contemplated in the *FNPRM,* merging with a newspaper could boost the ability of a small broadcaster to compete more effectively in the market and to improve its local news offerings. The Commission's action in this *Order* will provide the flexibility to do just that.

33. The Commission agrees with comments stating that lifting the ban on newspaper/radio combinations is unlikely to have a significant effect on minority and female ownership in the radio market given that the thousands of radio stations across the country offer plenty of purchasing opportunities for minorities and women and at lower cost than most other forms of traditional media. In addition, the Commission does not anticipate that lifting the ban on newspaper/television combinations will lead to a meaningful decrease in the number of minority-owned television stations. Some groups previously expressed concern that minority-owned television stations would be targeted for acquisition if the ban were relaxed to favor waiver requests for certain newspaper/television combinations with stations ranked below the top four television stations in a market—a category that includes many minority-owned stations. Removing the ban across-the-board will ensure that no artificial incentives are created, and the record provides no evidence that minority- and female-owned stations will be singled out for acquisition, as some commenters have speculated. To the contrary, record evidence demonstrates that previous relaxations of other ownership rules have not resulted in an overall decline in minority and female ownership of broadcast stations, and the Commission sees no evidence to suggest that eliminating the NBCO Rule will produce a different result and precipitate such a decline. Ultimately, given the state of the newspaper industry, the Commission expects that broadcasters may be better positioned to be the buyer, rather than the seller, in most transactions that flow from the rule's repeal. Furthermore, submissions in the record suggest that some minority media owners may be poised to pursue cross-ownership acquisition and investment opportunities. Therefore, eliminating the rule potentially could increase minority ownership of newspapers and broadcast stations.

34. In addition, the Commission rejects assertions that *Prometheus III* prevents the Commission from repealing or modifying any of its broadcast ownership rules on reconsideration. Contrary to such assertions, the Third Circuit's holding in *Prometheus III* does not require the Commission to adopt a socially disadvantaged business (SDB) definition before it can revise or repeal any rules; rather, the court simply required the Commission to complete its analysis of whether to adopt such a definition. The Commission completed that required analysis in the *Second Report and Order* and declined to adopt an SDB standard.

35. Finally, in the *Second Report and Order,* the Commission stated that the revised NBCO Rule it adopted would help promote ownership diversity. The Commission's comment, however, did not indicate a belief that the rule would promote minority and female ownership specifically, but rather that the rule would promote ownership diversity generally by requiring the separation of newspaper and broadcast station ownership. Moreover, the Commission made it clear that promoting viewpoint diversity, as opposed to preserving or promoting minority and female ownership, was the purpose of its revised rule. The record does not suggest that restricting common ownership of newspapers and broadcast stations promotes minority and female ownership of broadcast stations, and there is evidence in the record that tends to support the contrary. Thus, fostering minority and female ownership does not provide a basis to retain the rule.

B. Radio/Television Cross-Ownership Rule

1. Introduction

36. The Commission grants the request for reconsideration of the Commission's decision in the *Second Report and Order* to retain the Radio/

Television Cross-Ownership Rule. Ownership of television and radio stations will continue to be limited by the Local Television and Local Radio Ownership Rules.

2. Background

37. In the *Second Report and Order,* the Commission retained the Radio/Television Cross-Ownership Rule with only minor technical modifications, finding that the rule remained necessary to promote viewpoint diversity. Despite its prior tentative conclusion to the contrary, the Commission concluded that the Radio/Television Cross-Ownership Rule remains necessary given that radio stations and television stations both contribute in meaningful ways to promote viewpoint diversity in local markets. The Commission further claimed that the rule continues to play an independent role in serving the public interest separate and apart from the Local Radio and Local Television Ownership Rules, which are designed primarily to promote competition. In its petition for reconsideration, NAB asserts that the decision in the *Second Report and Order* to retain the Radio/Television Cross-Ownership Rule (with only minor technical modifications) was arbitrary and capricious and contrary to Section 202(h) of the 1996 Act.

3. Discussion

38. On reconsideration, the Commission eliminates the Radio/Television Cross-Ownership Rule, concluding that it is no longer necessary to promote viewpoint diversity in local markets. The Commission concludes that the Commission erred in finding in the *Second Report and Order* that broadcast radio stations contribute to viewpoint diversity to a degree that justifies retention of the rule, particularly in light of other local media outlets that contribute to viewpoint diversity. The Commission also concludes that, given that the rule already permits a significant degree of common ownership, it is doing very little to promote viewpoint diversity and its elimination therefore will have a negligible effect. The record in this proceeding gives no cause to disturb the long-standing conclusion that the rule is not necessary to promote localism. However, elimination of the rule is likely to have a negligible impact in most markets, so any impact on localism—positive or negative—will be similarly negligible. Finally, the Commission finds that elimination of the rule is not likely to have a negative impact on minority and female ownership.

39. Contrary to the Commission's findings in the *Second Report and Order,* as discussed below, the Commission finds that broadcast radio stations' contributions to viewpoint diversity in local markets no longer justify retention of the Radio/Television Cross-Ownership Rule. The Commission tentatively concluded in the *NPRM* (77 FR 2867, Jan. 19, 2012, FCC 11–186, rel. Dec. 22, 2011) that the rule was no longer necessary to promote viewpoint diversity. It then sought further comment on that tentative conclusion in the *FNPRM.* The Commission's approach in the *NPRM* and *FNPRM* was based on an already robust record—which was strengthened by comments filed in response to the *FNPRM*—demonstrating that local radio stations are not primary sources of viewpoint diversity in local markets and that alternative media outlets are a growing and important source of viewpoint diversity. The Commission, however, reversed itself in the *Second Report and Order,* concluding that the rule should be retained. In doing so, the Commission largely relied on limited evidence, much of it anecdotal or immaterial, to conclude that radio contributes to viewpoint diversity in local markets to a degree sufficient to justify retention of the rule. For example, the comments cited by the Commission primarily discussed format selection, music programming, and national news content, all of which are aspects of radio programming that do not inform the Commission's viewpoint diversity analysis.

40. The Commission also discussed broadcast radio's contributions to viewpoint diversity in the NBCO rule section of the *Second Report and Order.* That discussion was equally unpersuasive. The Commission failed to demonstrate that broadcast radio stations are significant independent sources of local news, relied on statistics that failed to distinguish between local and national news content, referenced examples of broadcast content on low-power stations, and relied heavily on only a handful of anecdotes regarding broadcast radio's contributions to viewpoint diversity. The rule does not apply to low-power stations, and their contribution to diversity is unaffected by the decision to retain or repeal the radio-television cross-ownership rule. All of these flaws undermine the broad finding that broadcast radio stations contribute to viewpoint diversity to an extent that continues to justify cross-ownership regulation.

41. NAB argues that the Commission failed to justify its departure from its position in the *NPRM* and *FNPRM* that radio stations make only limited contributions to local viewpoint diversity. The Commission agrees and find that the Commission's conclusion in the *Second Report and Order* that radio contributes to local viewpoint diversity in meaningful ways, such that it justified retention of the rule—a clear departure from its earlier, well-supported position—was not supported by the record. The Commission has long maintained that broadcast radio stations are not a primary source of viewpoint diversity in local markets. While the record indicates that broadcast radio stations may contribute to viewpoint diversity in local markets to a certain degree, the Commission finds that, in the current media marketplace, these contributions no longer justify restrictions on television/radio cross-ownership.

42. For example, the Commission itself acknowledged that consumers' reliance on radio for some local news and information has declined significantly over time—falling from 54 percent to 34 percent over the last two decades—as has the number of all-news commercial radio stations—down to 30 stations from (the already low) 50 stations in the mid-1980s out of over 11,000 commercial radio stations. Moreover, the overwhelming majority of programming on news-talk stations is nationally syndicated, rather than locally produced. Comments in the record, which the *Second Report and Order* did not address or dispute, support these findings. A Gallup poll found that only six percent of Americans turn to radio as their main news source, and a Pew study found that the percentage of Americans reporting that they got any news from radio on the previous day dropped from more than 50 percent in 1990 to 33 percent in 2012 (consistent with earlier findings cited by the Commission). Only five percent cite radio as a main source for political and arts and cultural information, four percent for crime updates, and three percent or less for information on various other topics. A 2013 Pew study confirmed the overall trend, finding that news programming had been relegated to an even smaller corner of the listening landscape. Even within this smaller universe, a substantial segment consists of National Public Radio (NPR)-affiliated noncommercial broadcast radio stations, which are not subject to the broadcast ownership limits. At present, NPR has over 900 member stations in the U.S. As discussed above, the attempt in the *Second Report and Order* to overcome

the record in this proceeding of radio's relatively minor contribution as a source of local news and the Commission's historical recognition of radio's reduced role in promoting viewpoint diversity is unpersuasive. The record supports far better the Commission's tentative conclusions in the *NPRM* and *FNPRM* regarding radio's limited contributions to viewpoint diversity in local markets.

43. In addition, the Commission finds that, as NAB contends, the Commission's decision to retain the rule did not properly acknowledge the realities of the digital media marketplace, in which consumers now have access to a multitude of information sources that contribute to viewpoint diversity in local markets. In the *Second Report and Order,* the Commission found that platforms such as the internet or cable do not contribute significantly to viewpoint diversity in local markets and therefore do not meaningfully protect against the potential loss of viewpoint diversity that would result from increased radio/television cross-ownership. The Commission disagrees with arguments that the Commission properly found that cable and satellite programming do not meaningfully contribute to coverage of local issues and that information available online usually originates from traditional media sources. The Commission finds instead that the Commission erred in discounting the role that non-traditional sources play in the local media marketplace and that the contributions of such outlets result in greater access to independent information sources in local markets. In particular, evidence in the record clearly demonstrates the emergence of online outlets—including many unaffiliated with broadcast or print sources—that now offer local news and information. And as discussed above, the Commission finds that it failed to properly credit the local news offerings of cable operators. Even if cable and online outlets are not yet primary sources of local news and information programming, their contributions cannot be overlooked. While the Commission relied on a handful of anecdotes to overcome its earlier, compelling findings regarding broadcast radio's limited contributions to local news and information programming, it refused to give appropriate consideration to more persuasive evidence of the increasing contributions of non-traditional media—a trend the Commission had previously noted, and which has continued.

44. The decline of radio's role in providing local news and information, together with the rise of online sources, marks a change from the circumstances the Commission faced when it upheld the rule in the *2006 Quadrennial Review Order.* Accordingly, the Commission finds that contributions to viewpoint diversity from platforms such as the internet and cable, while not primary sources of viewpoint diversity in local markets, help mitigate any potential loss of viewpoint diversity that might result from limited increases in radio/television cross-ownership.

45. Importantly, the Commission does not mean to suggest that broadcast radio stations make no contribution to viewpoint diversity in local markets—they do. In order to continue to justify the radio/television cross-ownership limits under Section 202(h), however, the Commission is compelled to consider these contributions in the context of the broader marketplace as it exists today, in which broadcast television, print, cable, and online sources all contribute to viewpoint diversity. Broadcast radio's contributions notwithstanding, the wide selection of sources now available renders the Radio/Television Cross-Ownership Rule obsolete in today's vibrant media marketplace.

46. Moreover, the Commission finds that because the rule already permits significant cross-ownership in local markets, eliminating it will have only a minimal impact on common ownership, as parties will continue to be constrained by the applicable ownership limits in the Local Television and Local Radio Ownership Rules. For example, pursuant to the Radio/Television Cross-Ownership Rule, in the largest markets, entities are permitted to own, in combination, either two television stations and six radio stations or one television station and seven radio stations. The Local Radio Ownership Rule permits an entity to own a maximum of eight radio stations in a single market. Therefore, in the largest markets, absent the Radio/Television Cross-Ownership Rule, an entity approaching the limits of the existing cap will be permitted to acquire only one additional radio station and remain in compliance with the Local Radio Ownership Rule. Likewise, an entity with one television station already could acquire only one additional station in these large markets under the Local Television Ownership Rule. Thus, the effect of eliminating the radio/television cross-ownership rule will be small and, as discussed above, mitigated by contributions to viewpoint diversity from other media outlets. In addition, the local ownership limits for television and radio, while intended primarily to promote competition, will continue to prevent an undue concentration of broadcast facilities, thereby preserving opportunities for diverse local ownership, and are therefore adequate to serve the goals the Radio/Television Cross-Ownership Rule was intended to promote.

47. In light of its limited benefits, the Commission finds that the Radio/Television Cross-Ownership Rule no longer strikes an appropriate balance between the protection of viewpoint diversity and the potential public interest benefits that could result from the efficiencies gained by common ownership of radio and television stations in a local market, efficiencies that the Commission has previously recognized. For example, NAB cites numerous Commission studies that found that radio/television cross-ownership produces public interest benefits, including increased news and public affairs programming. The Tribune Company also provides examples of how its co-owned radio/television combinations have been able to improve outreach to their local community and work collaboratively to improve coverage of issues of local concern. The current rule prevents localism benefits from accruing more broadly, without providing meaningful offsetting benefits to viewpoint diversity. As such, the Commission can no longer justify retention of the Radio/Television Cross-Ownership Rule under Section 202(h). In light of the significant common ownership already allowed under the rule, it is not appropriate to modify and retain the rule, which the Commission has found is no longer in the public interest under Section 202(h). Indeed, the record demonstrates that there is no policy justification—competition, localism, or viewpoint diversity—upon which to base such a revised rule. Because the Commission is eliminating the Radio/Television Cross-Ownership Rule on the grounds discussed herein, it is not necessary to reach alternative arguments involving the impact of ownership on viewpoint diversity.

48. *Minority and Female Ownership.* Lastly, consistent with the Commission's preliminary view in the *FNPRM,* the Commission finds that the record fails to demonstrate that eliminating the Radio/Television Cross-Ownership Rule is likely to harm minority and female ownership. While broadcast radio remains an important entry point into media ownership, eliminating this rule will not result in significant additional consolidation because of the constraints of the Local Radio Ownership Rule. Furthermore, there is no evidence that any additional

common ownership that would be permitted as a result of eliminating the Radio/Television Cross-Ownership Rule would disproportionately or negatively impact minority- and female-owned stations. Indeed, the analyses within the contexts of the Local Television Ownership Rule and the Local Radio Ownership Rule suggest that previous relaxations of those rules have not resulted in reduced levels of minority and female ownership. The Commission finds that the record provides no information to suggest that eliminating the Radio/Television Cross-Ownership Rule will have a different impact on minority and female ownership. The Commission disagrees with the general assertion by UCC et al. that the Commission cannot modify any of its media ownership rules without further study of the impact on minority and female ownership.

49. In the *Second Report and Order,* the Commission found that although the rule could help promote opportunities for diversity in broadcast television and radio ownership, it was not being retained for the purpose of preserving or creating specific amounts of minority and female ownership. The Commission's comment, however, did not indicate a belief that the rule would promote minority and female ownership specifically, but rather that the rule would promote ownership diversity generally by requiring the separation of radio and television broadcasters. The Commission cannot justify retaining the rule under Section 202(h) based on the unsubstantiated hope that the rule will promote minority and female ownership.

C. Local Television Ownership Rule

1. Introduction

50. Upon reconsideration, the Commission finds that the Local Television Ownership Rule adopted in the *Second Report and Order* is not supported by the record and must be modified.

2. Background

51. The *Second Report and Order* effectively retained the existing Local Television Ownership Rule (with only a minor technical modification of the contour overlap provision to reflect the transition to digital broadcasting), finding that the rule remained necessary to promote competition. Despite a record replete with evidence of the significant changes in the video marketplace, the Commission's decision left in place ownership restrictions originally implemented in 1999. Under the rule adopted in the *Second Report and Order,* an entity may own up to two television stations in the same market if: (1) the digital noise limited service contours (NLSCs) of the stations (as determined by section 73.622(e) of the Commission's rules) do not overlap; or (2) at least one of the stations is not ranked among the top-four stations in the market and at least eight independently owned television stations would remain in the market following the combination. NAB and Nexstar filed petitions for reconsideration of the Local Television Ownership Rule, specifically challenging the Top-Four Prohibition and the Eight-Voices Test.

3. Discussion

52. On reconsideration, the Commission adopts a revised Local Television Ownership Rule, finding that the rule adopted in the *Second Report and Order* is no longer necessary in the public interest as a result of competition. The Commission's revised rule reflects its assessment of both the current video marketplace and the continued importance of broadcast television stations in their local markets. Specifically, the Commission finds that the Eight-Voices Test is not supported by the record and must be eliminated. In addition, the Commission modifies the Top-Four Prohibition by incorporating a new case-by-case review process to address evidence in the record that the prohibition may be unwarranted in certain circumstances. The Commission finds that these modifications to the Local Television Ownership Rule are not likely to have a negative impact on minority and female ownership.

53. The Commission rejects the argument that reconsideration is inappropriate because petitioners rely on arguments that have been fully considered and rejected by the Commission within the same proceeding. Neither the Communications Act nor the Commission's rules preclude granting petitions for reconsideration that fail to rely on new arguments. Likewise, the Commission rejects UCC's claim that reconsideration is not warranted unless petitioners present new evidence. UCC's reliance on section 1.429(b) of the Commission's rules is misplaced, as this section does not *require* petitioners to support their claims of Commission error with new evidence. Commission precedent establishes that reconsideration is generally appropriate where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond. Even if a petition is repetitious, the Commission can, in its discretion, consider it. While the petitioners repeat some arguments made earlier in this proceeding, they nonetheless provide valid grounds for the Commission to reconsider its previous action. As discussed below, the Commission finds that the petitioners have identified material errors in the *Second Report and Order* warranting reconsideration of certain aspects of the Local Television Ownership Rule.

54. *Market.* The Commission finds that its decision in the *Second Report and Order* to adopt a rule focused on promoting competition among broadcast television stations in local television viewing markets was appropriate given the record compiled in this proceeding. The Commission concluded in the *Second Report and Order* that non-broadcast video offerings still do not serve as meaningful substitutes for local broadcast television and that competition within a local market motivates a broadcast television station to invest in better programming and to provide programming tailored to the needs and interests of the local community in order to gain market share. NAB and Nexstar urge the Commission to expand the market definition to include non-broadcast video alternatives, such as online and multichannel video programming distributors (MVPD) video programming sources. While the video marketplace has changed substantially since the current television ownership limits were adopted in 1999 and since the last Commission review of these rules concluded in 2008, broadcast television stations still play a unique and important role in their local communities. As such, the Commission believes that, on the current record, a rule focused on preserving competition among local broadcast television stations is still warranted. Thus, the Commission does not include other types of video programming providers within the market to which the restriction applies. The Commission emphasizes, however, that this conclusion could change in a future proceeding with a different record.

55. The Commission's finding does not mean, however, that changes outside the local broadcast television market should not factor into the Commission's assessment of the rule under Section 202(h) or that the Commission is free to retain its existing rule without any adjustments that take into account marketplace changes. Indeed, television broadcasters' important role makes it critical for the

Commission to ensure that its rules do not unnecessarily restrict their ability to serve their local markets in the face of ever-growing video programming options. Consumers are increasingly accessing video programming delivered via MVPDs, the internet, and mobile devices. Moreover, the online video distributor (OVD) industry—which includes entities such as Netflix and Hulu—continues to grow and evolve. In addition to providing on-demand access to vast content libraries, many OVDs are now offering original programming and/or live television offerings similar to traditional MVPD offerings. The *Second Report and Order* acknowledged the popularity of these services but failed to properly account for this in its analysis. Accordingly, the Commission reconsidered the Local Television Ownership Rule and adopt common sense modifications that will help local television broadcasters achieve economies of scale and improve their ability to serve their local markets in the face of an evolving video marketplace.

56. *Eight-Voices Test.* Upon reconsideration, the Commission finds that the Eight-Voices Test is unsupported by the record or reasoned analysis and is no longer necessary in the public interest. Accordingly, the Commission grants the NAB Petition and the Nexstar Petition with respect to this issue.

57. Despite the fact that the Commission has spent years seeking comment regarding the local ownership rule, the record lacks evidence sufficient to support the Commission's decision to retain the Eight-Voices Test. In the *Second Report and Order,* the Commission asserted that competition among stations affiliated with the Big Four networks (often the top-four rated broadcast stations in a local market) and at least four independent competitors unaffiliated with a Big Four network motivates all of the stations in a market to improve their programming, including providing additional local news and public interest programming. Yet the Commission did not provide or cite any evidence to support this argument, even though the Eight-Voices Test has been around since 1999 (more than enough time to observe whether the Eight-Voices Test has been having the expected impact in local markets).

58. The Commission also failed to explain adequately why the number of independent television stations must be equal to the number of top-performing stations in a market. The Commission stated that a significant gap in audience share persists between the top-four rated stations in a market and the remaining stations in most markets, but it offered no justification for the notion that the dominance of four top-performing stations must be balanced by an equal number of independent, lower-performing stations. The Commission provided no precedent, record evidence, or economic theory to support this notion. Moreover, a significant gap in audience share between the top-four stations and the other stations in a market could also logically justify permitting the common ownership of non-top-four stations to form a stronger competitor to the top-four stations and thus promote competition, even if fewer than eight independent voices remain.

59. Instead, the Commission's primary justification for retaining the Eight-Voices Test apparently stems from the historical use of the number eight as the proper number of voices when the rule was revised in 1999 to permit duopoly ownership in certain circumstances. Notably, that decision relied on viewpoint diversity grounds to determine the appropriate numerical limit. The Commission subsequently determined that the rule was no longer necessary to promote viewpoint diversity and instead relied on competition to support its adoption of the exact same voices limit in the *2006 Quadrennial Review Order.* The Commission, however, offered no empirical evidence to support this line drawing in the *2006 Quadrennial Review Order* as necessary to preserve competition, and as discussed above, the Commission finds that the rationale set forth in the *Second Report and Order* was flawed. Although the Commission's decision to retain the Eight-Voices Test in the *2006 Quadrennial Review Order* was upheld in *Prometheus Radio Project* v. *FCC,* 652 F.3d 431 (3d Cir. 2011) (*Prometheus II*), the Commission is obligated under Section 202(h) to justify its broadcast ownership rules based on the existing record and in light of current marketplace realities. On reconsideration, the Commission finds no record support for retaining the Eight-Voices Test and concludes that retaining it does not serve the public interest. Further, as discussed below, the Eight-Voices Test prevents the realization of public interest benefits. Accordingly, it must be eliminated.

60. The record fails to support the adoption of a different voice test, *e.g.,* six voices, despite specific requests for comment on alternative voice tests in this proceeding. One commenter argued for lowering the voice count in general, and another proposed changing the test to four voices—a proposal the Commission rejects because such a restriction would be redundant given its decision, as discussed below, to retain the Top-Four Prohibition. Another commenter argued that the Eight-Voices Test should be eliminated and not replaced with an alternative test. No other commenters offered support for a different voice test. The Commission finds no justification for relying on an arbitrary voice count to promote competition and concludes that the public interest is better served by the revised rule the Commission adopts in this *Order,* which will allow combinations that will help lower-rated stations better serve their viewers while preserving the restriction that an entity may not own two top-four rated stations in a market unless it can demonstrate that such a combination will serve the public interest and in no event will allow common ownership of more than two stations in a market, subject to the contour overlap provision. The Commission finds that this is a more effective way to promote competition and still avoid harms associated with significant concentration in local markets than an arbitrary remaining voices test.

61. The Commission not only failed to provide a reasoned basis for retaining the Eight-Voices Test; it also ignored evidence in the record demonstrating that the Eight-Voices Test lacks any economic support, is inconsistent with the realities of the television marketplace, and prevents combinations that would likely produce significant public interest benefits. Indeed, no commenter has produced evidence of any other industry where the government employs an eight-competitor test. In multiple instances, the Commission acknowledged the potential public interest benefits of common ownership, which potentially allow a local broadcast station to invest more resources in news or other public interest programming that meets the needs of its local community. The Commission finds that the Eight-Voices Test denies the public interest benefits produced by common ownership without any evidence of countervailing benefits to competition from preserving the requirement. Furthermore, these markets—including many small and mid-sized markets that have less advertising revenue to fund local programming—are the places where the efficiencies of common ownership can often yield the greatest benefits. The Commission's action in repealing the Eight-Voices Test will enable local television broadcasters to realize these benefits and better serve their local markets. In particular, the record suggests that local news programming is

typically one of the largest operational costs for broadcasters; accordingly, stations may find that common ownership enables them to provide more high-quality local programming, especially in revenue-scarce small and mid-sized markets. After the draft order in this proceeding was publicly released, DISH Network L.L.C. (DISH) submitted an economic study based on viewer ratings data applicable to existing combinations of local television stations as compared with ratings data from independently owned stations in DMAs deemed comparable to the DMAs served by commonly owned stations. DISH claims that the study shows that common ownership of local television stations does not produce increased ratings for local programming; therefore, common ownership does not produce higher-quality local programming. DISH provides no reason it could not have submitted this study earlier in response to broadcasters' claims that relaxation of the rule would lead to more locally responsive and higher quality programming. Thus, it is inexcusably late. 47 CFR 1.429(b), (f). Moreover, the study suffers from significant methodological issues and fails to provide a sufficient basis upon which to draw any conclusions. For example, the study employs a simplistic analysis covering a small sample size and the results are highly dependent on the selection of data points, such as control DMAs, viewing period, and time slot. Furthermore, the analysis fails to address issues of statistical significance regarding viewership, and the cross-sectional analysis fails to account for other variables that may influence viewership in different markets or otherwise address the cases in the filing for which viewership is higher in duopoly markets. Ultimately, the study does not undermine the Commission's finding that efficiencies gained through common ownership can allow broadcasters to invest more resources in producing more and higher-quality locally responsive programming.

62. *Top-Four Prohibition.* In contrast to the Eight-Voices Test, the Commission finds that its decision in the *Second Report and Order* to treat combinations of two top-four stations differently from other combinations is supported in the record. The Commission therefore denies the NAB Petition and the Nexstar Petition to the extent each requested complete elimination of the Top-Four Prohibition. As discussed below, however, the Commission finds that modification of the Top-Four Prohibition to include a case-by-case analysis is appropriate in order to address instances in which the application of the Top-Four Prohibition may not be warranted based on the circumstances in a particular market or with respect to a particular transaction. This hybrid approach will allow for a more refined application of the Local Television Ownership Rule that will help facilitate the public interest benefits associated with common ownership in local markets.

63. The ratings data in the record generally supported the Commission's line drawing, and the potential harms associated with top-four combinations find support in the record. The Commission has repeatedly concluded that the Top-Four Prohibition is necessary to promote competition in the local television marketplace. As the Commission has consistently found, there is generally a significant cushion of audience share percentage points that separates the top four stations from the fifth-ranked stations. In the *Second Report and Order,* the Commission found that this pattern has not changed. Thus, top-four combinations would generally result in a single firm's obtaining a significantly larger market share than other stations and reduced incentives for commonly owned local stations to compete for programming, advertising, and audience shares. The Commission also finds that the data were sufficiently recent and uncontradicted by any newer ratings data in the record, such that it was appropriate for the Commission to rely on the data in reaching its decision. The Commission considered alternative arguments and data in the record and ultimately found that the Top-Four Prohibition, last endorsed in the *2006 Quadrennial Review Order,* continued to be supported. In arguing that the Top-Four Prohibition should be eliminated, NAB notes that evidence in the record demonstrated that the concerns that the Top-Four Prohibition is intended to address may not be present in many markets. NAB also provides additional information demonstrating that some markets do not have a gap between the ratings of the fourth- and fifth-ranked stations or that the gap is larger between second- and third-ranked stations in some markets. The Commission has long conceded that the justification for the Top-Four Prohibition does not apply in all markets. Thus, the rule may prohibit combinations that do not present public interest harms or that offer potential public interest benefits that outweigh any potential harms. To this extent, the bright-line prohibition is over-inclusive. On reconsideration, the Commission believes that it is appropriate to modify the rule to allow for more flexibility.

64. In particular, the Commission takes steps to mitigate the potentially detrimental impacts of applying the Top-Four Prohibition in certain circumstances. In the *Second Report and Order,* the Commission conceded the potential public interest benefits from allowing additional common ownership, yet found that the harms associated with top-four combinations exceeded these benefits. This logic no doubt holds when the rationale for adopting the Top-Four Prohibition applies, though the benefits could exceed the harms in certain circumstances based on an evaluation of the characteristics of a particular market or a particular transaction.

65. Instead of relying solely on the bright-line application of the Top-Four Prohibition, the Commission is adopting a hybrid approach that will allow applicants to request a case-by-case examination of a proposed combination that would otherwise be prohibited by the Top-Four Prohibition. Under a hybrid approach, a rule includes both bright-line provisions and a case-by-case element to allow for consideration of market-specific factors. Such an approach provides certainty and flexibility when determining whether a particular transaction should be granted. Though no party commented on this issue, the Commission finds that the record supports its approach. As discussed in this *Order,* special scrutiny of combinations of two top-four rated stations is still supported by the record, though the record also demonstrates a need for flexibility in addressing circumstances in which application of the Top-Four Prohibition may not be appropriate due to the particular circumstances in a local market. The hybrid approach is well suited for such circumstances. Such an approach will help mitigate the potential drawbacks associated with strict application of the Top-Four Prohibition, while still preserving the ease and efficiency of applying the rule. This revised rule will continue to promote robust competition in local markets while also facilitating transactions, in appropriate circumstances, that will allow broadcast stations to achieve economies of scale and better serve their local viewers.

66. As the Commission has just discussed, the record demonstrates the need for flexibility in the application of the Top-Four Prohibition. Given the variations in local markets and specific transactions, however, the Commission does not believe that applicants would be well served by a rigid set of criteria for its case-by-case analysis. The record

does, however, suggest the types of information that applicants could provide to help establish that application of the Top-Four Prohibition is not in the public interest because the reduction in competition is minimal and is outweighed by public interest benefits. Such information regarding the impacts on competition in the local market could include (but is not limited to): (1) Ratings share data of the stations proposed to be combined compared with other stations in the market; (2) revenue share data of the stations proposed to be combined compared with other stations in the market, including advertising (on-air and digital) and retransmission consent fees; (3) market characteristics, such as population and the number and types of broadcast television stations serving the market (including any strong competitors outside the top-four rated broadcast television stations); (4) the likely effects on programming meeting the needs and interests of the community; and (5) any other circumstances impacting the market, particularly any disparities primarily impacting small and mid-sized markets. Applicants are encouraged to provide data over a substantial period (*e.g.,* the past three years, similar to the requirement in the failing/failed station waiver test) to strengthen their request and to help avoid circumvention of the Top-Four Prohibition based on anomalous data over a short period of time or manipulation of program offerings prior to the proposed transaction. In the end, applicants must demonstrate that the benefits of the proposed transaction would outweigh the harms, and the Commission will undertake a careful review of such showings in light of the record with respect to each such application.

67. The Commission disagrees with the contention that affording licensees a case-by-case opportunity to seek approval of top-four combinations cannot be squared with the bright-line rule adopted in the Commission's *2014 Retransmission Consent Report and Order* (79 FR 28615, May 19, 2014, FCC 14–29, rel. Mar. 31, 2014). There, the Commission concluded that the potential competitive harms arising from joint negotiation of retransmission consent by non-commonly owned stations outweighed the potential benefits and determined that a bright-line prohibition would be more administratively efficient than case-by-case review because it would provide the bargaining parties with advance notice of the appropriate process for such negotiation. Here, however, the result of the Commission's case-by-case review of proposed top-four combinations will provide bargaining parties with advance notice of whether joint retransmission consent negotiations for the two stations in question will be allowed. Moreover, common ownership of two top-four stations implicates a broader range of potential benefits and harms than a narrow agreement between two top-four stations to jointly negotiate retransmission consent so there is no inherent inconsistency between adopting a bright-line rule in the latter case and a case-by-case review in the former case. Additionally, the Commission rejects the contention that adopting a case-by-case review is inconsistent with the statute. To the extent that the existing Top-Four Prohibition is overbroad given the current state of competition, as the Commission concludes here, then the existing prohibition, absent modification, is not necessary in the public interest as a result of competition and should be modified. Moreover, in adopting this approach, the Commission declines to adopt specific criteria related to the issue of retransmission consent, as recently advocated by some commenters. Instead, as discussed in this *Order,* the Commission believes that the case-by-case review process will allow parties to advance any relevant concerns—including concerns related to retransmission consent issues—in the context of a specific proposed transaction if such issues are relevant to the particular market, stations, or transaction.

68. Similarly, the Commission rejects the recommendation of Independent Television Group (ITG) that the Commission adopt a presumption in favor of top-four combinations in small and mid-sized markets. ITG provides no evidence sufficient to support such a presumption. ITG simply relies on NAB's assertion in its 2014 comments that in some markets, there may have been significant disparities in audience share among some of the top-four rated stations. The case-by-case analysis is not weighted in favor of transactions in any particular market, and applicants in small and mid-sized markets will be able to provide market-specific evidence supporting their requests.

69. Gray Television, Inc. proposes that, at least in smaller markets, two stations be permitted to combine ownership if one of the stations has not produced a local newscast in the previous two years. The Commission finds, however, that market characteristics and the state of local programming, including local news offerings, are better considered in its case-by-case analysis at this time. The Commission anticipates that any transactions processed under this case-by-case approach will help inform any consideration of specific criteria that could be included in any future revision of the Local Television Ownership Rule, which will be reviewed again in the forthcoming 2018 Quadrennial Review proceeding.

70. *Minority and Female Ownership.* The Commission finds that the modifications adopted to the Local Television Ownership Rule are not likely to harm minority and female ownership. As noted in the *Second Report and Order,* data in the record demonstrate that relaxation of the Local Television Ownership Rule in 1999 did not have a negative impact on overall minority ownership levels. In this lengthy proceeding, no party has presented contrary evidence or a compelling argument demonstrating why relaxing this rule will have a different impact. Indeed, consistent with the *Second Report and Order,* the Commission finds that the record does not support a causal connection between modifications to the Local Television Ownership Rule and minority and female ownership levels.

71. In the *Second Report and Order,* the Commission stated that ensuring the presence of independently owned broadcast television stations in the local market indirectly increases the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants. The Commission's comment, however, did not indicate a belief that the rule would promote minority and female ownership specifically, but rather that the rule would promote ownership diversity generally by limiting common ownership of broadcast television stations. This statement will continue to be true with respect to the revised rule that the Commission adopts in this *Order.* Under Section 202(h), however, the Commission cannot continue to subject broadcast television licensees to aspects of the Local Television Ownership Rule that can no longer be justified based on the unsubstantiated hope that these restrictions will promote minority and female ownership. In addition, the Commission disagrees with the general assertion by UCC et al. that the Commission cannot modify any of its media ownership rules without further study of the impact on minority and female ownership. The Commission also disagrees with assertions by the Multicultural Media, Telecom and internet Council and the National Association of Black Owned

Broadcasters that the rules can be retained based on promoting news coverage of specific issues.

72. *Incentive Auction.* The Commission reiterates that it remains premature to analyze the implications of the incentive auction on the Local Television Ownership Rule. Contrary to the position of certain parties, the Commission cannot—and did not in the *Second Report and Order*—use the auction as an excuse for delaying action and refusing to fulfill its obligations under Section 202(h). While the Commission finds fault in its prior decision to retain the existing television ownership restrictions without modification, the incentive auction was not a factor in that decision. Instead, the Commission properly found that it could not delay a decision on its rules because of the auction nor could it adopt changes to its rules based on speculation as to the final results of the auction. The Commission agrees with its prior finding. Section 202(h) compels the Commission to act on the record before it and determine whether to retain, repeal, or modify the Local Television Ownership Rule based on the realities of the current marketplace, which the Commission has done. Though the auction has finished, it is still too soon to evaluate its impacts on the television marketplace. While there is still time for stations to change their post-auction channel sharing elections, the initial results of the auction suggest that the auction may not have a significant impact in the context of the Local Television Ownership Rule, as the overwhelming majority of commercial, full-power winning bidders have elected to channel share once they surrender their spectrum. The Commission will continue to monitor these elections as part of its continuing efforts to assess the impact of the auction on the television marketplace. As noted in the *Second Report and Order,* the Commission will evaluate the broadcast marketplace post-auction and expects that these issues will be considered in the forthcoming 2018 Quadrennial Review proceeding.

D. Local Radio Ownership Rule

1. Introduction

73. The Commission denies in part and grants in part Connoisseur's petition for reconsideration of the Commission's decision in the *Second Report and Order* to retain the current methodology for determining compliance with the Local Radio Ownership Rule in markets containing embedded markets (*i.e.,* smaller markets, as defined by Nielsen Audio, that are included in a larger parent market). The Commission grants Connoisseur's petition to the extent it seeks a presumption that would apply its two-prong test for waiver requests involving existing parent markets with multiple embedded markets pending further consideration of this issue in the 2018 Quadrennial Review proceeding.

2. Background

74. Connoisseur seeks reconsideration of the decision in the *Second Report and Order* to retain the existing methodology for embedded markets and asks the Commission to adopt a new two-pronged test for a station owner that seeks to own stations licensed to home counties (*i.e.,* the county in which the station's community of license is geographically located) in different embedded markets within a single parent market. Consistent with the Commission's current methodology, under the first part of Connoisseur's proposed test, a station owner would be required to comply with the numerical ownership limits using the Nielsen Audio Metro methodology in each embedded market. Under the second part, however, the station owner would be required to comply with the ownership limits using a contour-overlap methodology in lieu of the Commission's current parent market analysis. Connoisseur argues that, as a result of the Commission's existing methodology, a broadcaster which owns stations in one embedded market may be precluded from owning stations in another embedded market, despite the lack of competitive overlap between those markets.

3. Discussion

75. The Commission denies in part and grants in part Connoisseur's petition for reconsideration. First, the Commission finds that its decision to not adopt a blanket change to the current methodology was supported by a reasoned explanation. Second, the Commission finds that its decision to adopt a contour-overlap methodology for the Puerto Rico market is not at odds with the approach the Commission took regarding embedded markets. Finally, the Commission grants Connoisseur's alternative request to adopt a presumptive waiver approach for existing parent markets with multiple embedded markets.

76. The Commission finds that it provided a reasoned explanation for its decision in the *Second Report and Order* to not adopt a blanket change to the current embedded market methodology. Connoisseur argues that the Commission acted arbitrarily in deciding to retain the current methodology. In particular, Connoisseur maintains that counting stations from multiple embedded markets for purposes of calculating compliance with the numerical limits in the parent market is unreasonable because stations in embedded markets do not compete in any meaningful way with stations in other embedded markets or stations in the central city of the parent market. The Commission noted in the *Second Report and Order,* it has long relied on Nielsen Audio's market analysis, as reported by BIA, which lists all the stations that are deemed to compete in a given market (often referred to as above-the-line stations), as the basis for multiple ownership calculations for embedded and parent markets. The Commission found that the Nielsen-defined markets are the primary means by which broadcasters and advertisers place a value on advertising sold by stations listed as participating in the market. Nielsen Audio's market definitions are recognized as the industry standard and provide for consistency and ease of application in comparison to other possible methods for defining local radio markets. The inclusion of an embedded market station as an above-the-line station in a parent market therefore has long been thought to reflect a determination by Nielsen Audio that, absent other information, the station competes in that market. The Commission notes that its continued reliance on Nielsen Audio market definitions for purposes of applying the Local Radio Ownership Rule provides an important level of certainty to radio licensees in all markets, including those in embedded markets, and overcomes disadvantages associated with the contour-overlap approach. Although Nielsen has historically defined what stations compete in a market based on geographical market boundaries, and the Commission's rules have relied on these determinations in determining compliance with its ownership caps, Connoisseur's Oct. 30, 2017 *ex parte* letter raises issues related to embedded markets that should be further explored in greater detail in the 2018 Quadrennial Review proceeding. However, the arguments in the *ex parte* letter support adoption of a presumptive waiver approach for transactions involving existing parent markets with multiple embedded markets.

77. The Commission also finds that its decision in the *Second Report and Order* to adopt a contour-overlap methodology for the Puerto Rico market is not inconsistent with the approach to

embedded markets. Connoisseur argues that parent markets containing multiple embedded markets are analogous to the Puerto Rico market where mountainous topography, as opposed to a central city, separates smaller centers of economic activity within the larger parent market. Accordingly, Connoisseur asserts that the contour-overlap methodology the Commission applies to the Puerto Rico market likewise should be applied in the context of embedded markets in lieu of the Commission's current parent market analysis. The Commission finds that differences between the Puerto Rico market and a parent market that includes embedded markets make the comparison between the two circumstances inappropriate. As one example, the core location of a station's listenership has the potential to shift geographically over time in a parent/embedded market scenario in a way that would be unlikely, or even impossible, where, as in Puerto Rico, the physical terrain prevents a station from reaching other geographic areas. Indeed, the Commission has long stated that the Puerto Rico market is unique, even as compared to other large metro areas. The Commission has a long history—dating back to 2003—of applying the contour-overlap methodology to Puerto Rico on a case-by-case basis due to the unique characteristics of that market. The Commission therefore finds that its decision to retain the existing methodology for embedded markets is not undermined by its decision to adopt a contour-overlap methodology in Puerto Rico.

78. For these reasons, the Commission continues to find that, rather than adopting Connoisseur's proposal for an across-the-board change to the Commission's embedded market methodology, entertaining a market-specific waiver is the appropriate approach at this time. In the *Second Report and Order,* the Commission acknowledged Connoisseur's concerns with respect to the particular characteristics of the current New York market and indicated its willingness to entertain a waiver specific to that market, a willingness the Commission reiterates in this *Order.* Ultimately, the issue continues to appear narrow in scope—largely specific to a small number of parties' concerns with at most two markets. The circumstances Connoisseur describes could apply currently to, at most, two markets—New York City and Washington, DC. The Commission notes, however, that embedded market designations are subject to change, with the potential for embedded markets to be created, modified, or eliminated in the future. For instance, in addition to New York and Washington, DC, Connoisseur previously had identified San Francisco as an example of a parent market with two embedded markets. One of those embedded markets, however, is no longer rated by Nielsen. Accordingly, the San Francisco market now includes only one embedded market and is therefore no longer relevant to the issues discussed in Connoisseur's petition, which pertain solely to parent markets containing multiple embedded markets. As such, the potential impact of a proposed transaction involving embedded market stations may vary based on the specific markets, stations, and ownership interests involved.

79. Accordingly, the Commission finds Connoisseur's argument regarding a presumptive waiver approach to be persuasive. While a bright-line rule codifying Connoisseur's preferred approach to embedded markets would no doubt provide greater certainty, as discussed in this *Order,* the Commission does not believe that such an approach is supported by the record at this time. Instead, the Commission intends to fully examine its existing methodology regarding embedded market transactions in the forthcoming 2018 Quadrennial Review proceeding. Pending the outcome of this review, however, the Commission adopts a presumption in favor of applying Connoisseur's two-prong test proposed on reconsideration to waiver requests involving existing parent markets with multiple embedded markets (*i.e.,* New York and Washington, DC). The Commission finds that there is sufficient evidence on the record to support a presumption that a waiver of the Local Radio Ownership Rule as to stations in these markets serves the public interest if the transaction at issue satisfies the two-prong test. Pursuant to section 310(d) of the Communications Act, the Commission must make a public interest determination with respect to any future applications based on the entire record with respect to that application. Throughout the proceeding, Connoisseur has provided information demonstrating that, due to the particular circumstances in these markets, applying the existing market methodology may not be warranted. These showings provide the Commission with sufficient confidence that transactions consistent with this presumption likely will not unduly impact competition in these markets, subject to the Commission's review under section 310(d). The Commission finds, however, that it is appropriate to limit the presumption to these markets (New York and Washington, DC), pending review in the 2018 Quadrennial Review proceeding, to avoid any potential manipulation of embedded markets in other Nielsen Audio markets.

80. Adoption of this presumption will give Connoisseur—and other parties—sufficient confidence with which to assess possible future actions. Further, the Commission anticipates that any such transactions will help inform its subsequent review of the Local Radio Ownership Rule—and, in particular, the treatment of embedded market transactions.

E. Television JSA Attribution

1. Introduction

81. On reconsideration, the Commission finds that it erred in its decision to adopt the Television JSA Attribution Rule and eliminates the Television JSA Attribution Rule. The petitioners also argue that the attribution decision must be reversed on the grounds that (1) the decision had the effect of tightening the media ownership rules, and that the Commission failed to properly analyze the impact of the attribution decision as required under Section 202(h) of the 1996 Telecommunications Act; and (2) the decision was inconsistent with the Commission's repeal of the wireless attributable material relationship (AMR) rule. Because the Commission is reversing its decision to adopt the Television JSA Attribution Rule on other grounds, it does not need to reach these arguments.

2. Background

82. The Commission first considered whether to attribute television JSAs in 1999. It declined to do so, finding that JSAs did not convey a sufficient degree of influence or control over station programming or core operations to warrant attribution and that JSAs helped produce public interest benefits. The Commission sought additional comment on this conclusion in a 2004 notice of proposed rulemaking after attributing radio JSAs in the *2002 Biennial Review Order.* Then in 2014, nearly a decade after initially seeking comment on the issue, the Commission changed course and adopted the Television JSA Attribution Rule, despite a lack of evidence suggesting that its prior determination that television JSAs do not convey sufficient influence or control to warrant attribution was wrong. Specifically, the rule established that JSAs that involve the sale of more than 15 percent of the weekly advertising time of a station (brokered

station) by another in-market station (brokering station) are attributable under the Commission's ownership rules. As a result, the brokering station was deemed to have an attributable interest in the brokered station, and the brokered station would count toward the brokering station's permissible ownership totals.

83. In the *Second Report and Order,* the Commission concluded that the Local Television Ownership Rule (with a minor modification) still served the public interest and it re-adopted the Television JSA Attribution Rule based on the same rationale articulated in the *Report and Order* (79 FR 28996, May 20, 2014, FCC 14–28, rel. Apr. 15, 2014). By their Petitions, NAB and Nexstar now seek reconsideration of the decision to re-adopt the Television JSA Attribution Rule, arguing that the Commission, in adopting the rule, ignored the evidence before it and reached a decision unsupported by the record.

3. Discussion

84. The Commission finds that Petitioners provide valid reasons to reconsider the Commission's decision to adopt the Television JSA Attribution Rule. The Commission's attribution analysis was deficient and failed to adequately consider the record, which does not support the Commission's conclusion that television JSAs confer on the brokering station a sufficient degree of influence or control over the core operating functions of the brokered station to warrant attribution. In addition, the record contains ample evidence of the public interest benefits that these JSAs provide. Even if the Commission had correctly determined that television JSAs involving more than 15 percent of the brokered station's weekly advertising time confer sufficient influence to warrant attribution, the Commission concludes that the potential benefits of television JSAs outweigh the public interest in attributing such JSAs. Accordingly, the Commission grants the NAB Petition and the Nexstar Petition with respect to this issue. As a result of the Commission's decision, 47 CFR 73.3613(d)(2) and the notes to 47 CFR 73.3555 will be amended to reflect the fact that television JSAs are no longer attributable. Additionally, various Commission rules will need to be revised to reflect the other rule changes and decisions adopted in this *Order,* as set forth in the final rules. The Commission directs the Media Bureau to make all form modifications and to take any other steps necessary to implement all the rule changes and other relevant decisions adopted in this *Order.* Though television JSAs will no longer be attributable as a result of the amount of advertising time brokered, the Commission reminds licensees that they must retain ultimate control over their programming and core operations so as to avoid the potential for an unauthorized transfer of control or the existence of an undisclosed or unauthorized real party in interest.

85. The Commission failed to demonstrate that television JSAs confer a sufficient degree of influence or control so as to be considered an attributable ownership interest under the Commission's ownership rules. While the Commission pointed out that the attribution analysis traditionally seeks to identify interests that provide the holder with the incentive and ability to influence or control the programming or other core operational decisions of the licensees—an inquiry that often relies on the Commission's predictive judgement—the Commission may not ignore the record or the realities of the marketplace when making this determination.

86. Here, the Commission's theory of attribution—a reversal of its earlier decision that television JSAs should not be attributable—was belied by its own extensive experience reviewing and approving television JSAs. Between 2008 and the decision to attribute television JSAs in 2014, the Commission's Media Bureau reviewed and approved 85 television JSAs in the context of transaction reviews. Given the Commission's extensive history reviewing specific television JSAs, it is telling that the record was devoid of any evidence that any JSA allowed a brokering station to influence even a single programming decision of a brokered station.

87. As Nexstar points out, the Commission's only citation in support of the theory that television JSAs might provide some measure of influence or control was inapposite. In *Ackerley Group, Inc.,* 17 FCC Rcd 10828 (2002), the Commission found that a combination of agreements, which included a flat-fee television JSA, were substantively equivalent to an attributable local marketing agreement (LMA). Yet the Commission's attribution analysis in the *Report and Order* relied solely on the sale of advertising time and not a combination of other agreements that may justify attribution under the Commission's rules and precedent. As such, this isolated incident failed to provide support for the Commission's theory of attribution.

88. The Commission attempted to sidestep the lack of evidence to support its theory of attribution by relying on the decision in the *2002 Biennial Review Order* to attribute radio JSAs. The Commission now agrees with Nexstar that this reliance was not appropriate. First, the Commission failed to explain why differences in fee structure (typically fixed fees for radio JSAs versus a percentage of advertising revenue for television JSAs) did not mitigate the Commission's earlier concerns that a fixed fee structure—which the Commission found to be common in radio JSAs—effectively transferred the market risk to the brokering station. In a percentage fee structure, the broker and brokering stations split revenues based on agreed upon percentages. By contrast, a flat fee structure provides a payment to the brokered station regardless of performance or revenues. The Third Circuit relied on this finding when upholding the decision to attribute radio JSAs, and the Commission also emphasized the fixed fee structure when it proposed to attribute television JSAs in 2004. The record shows, however, that television JSAs generally rely on percentage fee arrangements in which the brokered station retains a substantial portion of the advertising revenue, which makes it substantially less likely that the brokered station's programming decisions would be significantly influenced by the brokering station. This critical difference, however, was simply glossed over without an explanation as to how a percentage fee structure transferred market risk to the brokering station in the same way as a fixed fee structure. Indeed, it appears that the typical revenue split gives the licensee of the brokered station a significant interest in the operation and success of the station that is not present in a fixed fee arrangement. While the Commission declines to attribute television JSAs for the reasons set forth in this *Order,* it notes that, under *Ackerley,* the Commission could still find that the terms of an individual television JSA (either alone or in conjunction with other agreements) rise to the level of attribution.

89. The Commission also failed to consider sufficiently other distinctions between the television market and the radio market that undermined its reliance on the radio JSA attribution precedent. For example, unlike radio stations, television stations typically have network affiliations, which limits the amount of programming that a brokering station could potentially influence and the amount of available advertising time for sale. In the Commission's experience reviewing

television JSAs in transaction reviews, most of the television JSAs approved by the Commission involved the brokering of stations with network affiliations. To be sure, the Commission disagreed that this is a meaningful distinction, but once again, it failed to provide any record evidence to support its theory. The Commission claimed that, even with a network affiliation in place, the broker could potentially influence the selection of non-network programming, whether to preempt network programming, and/or the choice of network affiliation. This claim, however, was not supported with any evidence of such influence being exerted, neither over individual programming decisions nor the selection of a network affiliation.

90. The Commission similarly brushed aside evidence that television stations rely less on local advertising revenue than radio stations, which would reduce the amount of advertising time sold by the broker. Accordingly, the broker would control less of the television station's advertising revenue, which would limit the ability and incentive of the broker to exert significant influence or control over the brokered station's core operating procedures. The Commission summarily concluded that because both radio JSAs and television JSAs involve the sale of advertising time, both must be treated the same for attribution purposes. But this one-size-fits-all attribution analysis is not supported by the record and cannot be sustained.

91. The lack of evidence supporting the Commission's determination that television JSAs confer a significant degree of influence or control over the core operating functions of the brokered station provides sufficient reason for the Commission to eliminate the Television JSA Attribution Rule. But even if the Commission had appropriately determined that television JSAs meet the attribution criteria, it still should have evaluated whether the public interest would be served by making the agreements attributable. While the Commission did acknowledge the potential for benefits flowing from the use of television JSAs in the *Report and Order,* the Commission expressly refused to consider these public interest benefits in the context of its attribution decision, claiming that the public interest benefits should be considered in the context of its analysis of the local ownership rules. While declining to evaluate the significant record evidence of the public interest benefits produced by television JSAs, the Commission claimed that it would preserve beneficial television JSAs through a waiver process. That process, however, proved to be illusory, as the Commission did not grant a single waiver request while the Television JSA Attribution Rule was initially in effect, which ultimately led to Congressional action to protect existing television JSAs. As discussed in this *Order,* the Commission finds that the record does not support attribution of television JSAs in the first instance, so there is no need to consider whether to adopt a waiver process

92. The Commission was correct that the potential public interest benefits of television JSAs are not relevant to whether these agreements satisfy the Commission's general attribution criteria (*i.e.,* whether they confer the potential for significant influence), but that does not excuse the Commission from assessing the record to determine whether, if the attribution criteria are satisfied, attribution would serve the public interest. Notably, when the Commission attributed radio JSAs in the *2002 Biennial Review Order,* it did undertake such an assessment and found that the balance of interests, in those particular circumstances, supported the decision to attribute radio JSAs. That finding was based on the record in that proceeding, which did not contain significant or detailed evidence of the claimed public interest benefits of radio JSAs, and does not control the Commission's analysis of the potential benefits of television JSAs.

93. Additionally, in the *Second Report and Order,* which reinstated the Television JSA Attribution Rule, the Commission included only a brief, general discussion of the rationale for attributing television JSAs, largely ignoring the benefits of television JSAs. The Commission failed to discuss the voluminous record regarding the benefits produced by JSAs, instead citing anecdotal evidence that attribution of television JSAs—prior to being vacated by the Third Circuit—had produced opportunities for minority and female ownership. Its sole citation for this proposition, however, was a blog post authored by then-Chairman Tom Wheeler and Commissioner Mignon Clyburn. This claimed benefit is not supported by the record and, in fact, there is record evidence that refutes this assertion. This cursory treatment does not constitute an assessment of the record regarding the potential public interest benefits of television JSAs. As such, the Commission is not persuaded by the arguments that it properly weighed the public interest benefits before implementing this new rule. The American Cable Association (ACA) argues that eliminating the Television JSA Attribution Rule will allow broadcasters to covertly coordinate their retransmission consent negotiations in contravention of the joint negotiation prohibition. This argument is not persuasive. Broadcasters are prohibited from jointly negotiating retransmission consent for stations in the same local market that are not under common *de jure* control permitted by the Commission. Licensees are expected to comply with the Communications Act and Commission rules and policies, and the Commission has authority to take enforcement action where it finds a licensee has violated any relevant statutes, rules, or policies. The Commission will not assume that licensees will violate its rules, but entities can file a complaint if they believe that any broadcaster is violating the joint negotiation prohibition, and the Commission will take appropriate action.

94. On reconsideration, the Commission concludes that the record demonstrates that television JSAs can promote the public interest, and that this provides an independent reason for eliminating the Television JSA Attribution Rule. Indeed, the record demonstrates that television JSAs have created efficiencies that benefit local broadcasters—particularly in small- and medium-sized markets—and have enabled these stations to better serve their communities. The video marketplace is changing rapidly, and television JSAs can help reduce costs and attract vital revenue at a time of increasing competition for viewership. Broadcasters can turn these efficiencies into increased services for local communities. For example, a JSA between two stations in Kansas helped create cost savings that, in turn, allowed the stations to fund weather emergency-related crawls in Spanish, a service vital to the tornado-prone area. Other stations have been able to increase their local news programming and further invest in investigative reporting due to their JSAs. Additionally, certain JSAs have helped spur minority ownership. As noted in the record, a station owned by Tougaloo College, a historically African-American college, has credited its JSA for providing the resources necessary to upgrade to HD, to produce content relevant to its community, and to cover local sporting events. This is just a sampling of the many examples in the record in which JSAs have benefited local stations and communities.

95. Furthermore, the Commission failed to cite any evidence of actual harm associated with television JSAs. The Commission's analysis here under the public interest standard does not

supersede any antitrust analysis performed by the Department of Justice Antitrust Division (DOJ) on a case-by-case basis regarding JSAs or other agreements among broadcasters that are similar in function. Indeed, the Commission's public interest analysis differs from DOJ's antitrust review, reflecting a broader evaluation of the potential harms and benefits of ownership combinations in light of the requirements of the Communications Act and Commission rules and the objectives of the Act and rules. Consequently, nothing in this Order, or any amendment made by this Order, should be construed to modify, impair, or supersede the operation or applicability of any state or federal antitrust laws.

96. The Commission stated that JSAs could, *possibly,* allow the stations to raise their advertising rates above what could be achieved if the ad time were sold independently. The Commission, however, failed to engage in any actual analysis of the impact of television JSAs on advertisers, and the record in this proceeding contained no evidence of stations charging higher rates for advertising sold pursuant to a JSA and no support from advertisers for the Television JSA Attribution Rule. On the contrary, there was evidence in the record that advertisers have benefitted from JSAs, which make their ad buys more efficient. Similarly, as discussed above, the Commission did not identify a single instance of harm to viewers or competition in local markets resulting from a broker's exercise of influence over the programming or other core operations of a brokered station—indeed, as discussed above, the Commission did not cite a single instance of such influence even being exerted.

97. The Commission finds that, on balance, the public interest is best served by *not* attributing television JSAs, regardless of whether they technically satisfy the attribution criteria. As discussed above, the Commission's attribution analysis was not supported by the record, and this failure provides an independent reason for eliminating the Television JSA Attribution Rule. It is well within the Commission's authority to decline to attribute an agreement or relationship that might otherwise satisfy the attribution criteria in order to help foster public interest benefits. For example, in the *EDP Attribution Modification Order* (73 FR 28361, May 16, 2008, FCC 07–217, rel. Mar. 5, 2008), the Commission modified the Equity/Debt Plus Attribution Rule (EDP Rule) by carving out an exemption in certain circumstances to encourage investment in eligible entities. There, the record demonstrated that small businesses, including those owned by minorities and women, were having difficulty obtaining financing. The Commission acknowledged the potential role that the EDP Rule had in hindering investment in eligible entities and found that it was justified in relaxing the EDP Rule to help address this issue. This decision demonstrates the need to balance the purpose of the attribution rules—that is, to identify potentially influential interest holders—with the Commission's public interest goals.

98. Similarly, even if some television JSAs were to provide the brokering station some ability to influence the operations of the brokered station, the Commission finds that attribution is not warranted here in light of the significant public interest benefits produced by these agreements. Television JSAs can help promote diverse ownership and improve program offerings, including local news and public interest programming, in local markets. While the Commission agrees that it is important that its attribution rules reflect accurately the competitive conditions of local markets, particularly in the context of the Commission's local broadcast ownership rules, the analysis cannot end there. The Commission must ensure that its attribution decisions do not harm the very markets that the attribution rules are designed to protect by preventing the accrual of significant public interest benefits. As discussed in this *Order,* the tangible benefits of television JSAs far outweigh the benefits that may accrue from a rote application of the attribution criteria in these circumstances.

99. The Commission also finds that its decision to eliminate the Television JSA Attribution Rule is appropriate, even in light of its decision to relax the Local Television Ownership Rule. As discussed above, the Commission finds that it failed to establish that television JSAs confer significant influence warranting treating JSAs as attributable ownership interests, so the existence of television JSAs in the marketplace does not have an impact on the Commission's public interest analysis in the Local Television Ownership Rule context. Indeed, television JSAs have been utilized by many broadcasters with increasing prevalence for well over a decade. The record in this proceeding lacks any evidence of public interest harm, and there is evidence that these agreements have produced and can produce meaningful public interest benefits. As such, the Commission does not believe that the Local Television Ownership Rule should be made more restrictive due to the presence of television JSAs.

100. And while there may be fewer television JSAs executed moving forward because of the Commission's relaxation of the Local Television Ownership Rule, that does not diminish the public interest benefits associated with these agreements in the television context. The television ownership limits are still much more restrictive than the radio ownership limits, so there may be a continuing need for JSAs to help create economies of scale and improve program offerings, particularly for small or independent station owners. By preserving the ability to enter into a JSA, some station owners may be able to maintain independent operations instead of exiting the marketplace, and these agreements will continue to be available to help new entrants and small businesses acquire and operate new stations. Thus, the Commission is not persuaded that repeal of the eight-voices requirement and the Television JSA Attribution Rule will deter new entry based on consolidation of advertising sales.

F. Shared Service Agreements

1. Introduction

101. The Commission upholds its decision in the *Second Report and Order* to adopt a comprehensive definition of SSAs and a requirement that commercial television stations disclose SSAs by placing them in their online public inspection files.

2. Background

102. SSAs allow stations in a local market to combine certain operations, personnel, and/or facilities, with one station effectively performing functions for multiple, independently owned stations. The *FNPRM* proposed a comprehensive definition of SSAs and sought comment on the scope of the definition, including any potential refinements to the definition to help ensure that it was not overbroad. While certain commenters expressed concerns with the scope of the definition, none provided an alternative definition or suggested any specific changes to the definition proposed in the *FNPRM.* The *FNPRM* also sought comment on potential disclosure options for these agreements. In the *Second Report and Order,* the Commission adopted a definition of SSAs substantially similar to the definition proposed in the *FNPRM* and a requirement that commercial television stations disclose SSAs by placing them in their online public inspection files. In its Petition for

Reconsideration, NAB asks the Commission either to eliminate the SSA disclosure requirement or rationally define the SSAs subject to it, asserting that the SSA disclosure requirement is overbroad and unnecessary.

3. Discussion

103. The Commission declines to reconsider the SSA definition and disclosure requirements adopted in the *Second Report and Order.* The Commission finds that both the definition and the disclosure requirement were supported by the record and that NAB has failed to provide sufficient reasons to reconsider the Commission's decision at this time; therefore, the Commission denies the NAB Petition in this regard.

104. Contrary to NAB's claim, the *Second Report and Order* rationally defines SSAs. In the *Second Report and Order,* the Commission adopted a clear definition of SSAs and addressed commenters' concerns regarding the types of agreements covered by the definition. As the Commission discussed, the definition of SSAs is appropriately limited in scope, applying only to those agreements that involve station-related services. Moreover, the Commission sufficiently illustrated this scope by providing guidance in the definition of SSAs with non-exhaustive examples. The *Second Report and Order* also addressed specific concerns in the record, clarifying that certain agreements, such as ad hoc or on-the-fly arrangements during breaking news coverage, fall outside the SSA definition. Ultimately, the definition is appropriately tailored to include only those agreements that involve station operations relevant to the public. NAB expresses concern that the SSA definition would apply to agreements encompassing everything from janitorial to catering to maintenance to security services. An agreement to share facilities and station personnel meeting the definition of an SSA may include provisions allocating costs or responsibilities related to the operation and upkeep of the shared facilities. Consistent with the *Second Report and Order,* however, agreements that relate only to such incidental services, even those involving shared facilities, are not encompassed by the SSA definition and are not, therefore, subject to disclosure. Accordingly, the Commission finds NAB's concerns to be misplaced and sufficiently addressed in the *Second Report and Order.* In light of the Commission's analysis and the lack of any alternative definitions or specific refinements proposed in the record, including on reconsideration, the Commission finds no reason to reconsider the definition of SSAs adopted in the *Second Report and Order.*

105. The Commission also finds that the *Second Report and Order* provided a sufficient justification for requiring the disclosure of SSAs. The Commission is not required to first determine the regulatory status of SSAs before requiring disclosure. The *Second Report and Order* addressed the various objections in the record and effectively demonstrated that the Commission has the authority to require disclosure of SSAs in order help the Commission obtain information relevant to its statutory responsibilities. Any efforts to ascertain the potential impact of these agreements on the Commission's policy goals should not be read to imply only a negative impact. SSAs may help facilitate improved service in local communities, and disclosure of these agreements may provide greater insight into such potential benefits. The *Second Report and Order* set forth a sufficient justification for requiring disclosure in these circumstances, and NAB's brief argument to the contrary in its request for reconsideration gives the Commission no cause to disturb the underlying decision at this time.

106. While the Commission is upholding the decision in the *Second Report and Order* to require disclosure, the Commission emphasizes that its action is not a pretext for future regulation of SSAs. As the Third Circuit recognized, the Commission acted appropriately in declining to attribute these agreements in this proceeding, as some commenters had requested. Among other things, the Commission has admitted that it lacks an understanding of the potential impact of SSAs on a station's core operating functions, and evidence in the record suggests that these agreements help produce significant public interest benefits. Accordingly, any consideration of the regulatory status of these agreements by a future Commission must reflect significant study and understanding of the impact of these agreements on station operations and a complete account of the public interest benefits these agreements help facilitate. Furthermore, while the record compiled in this proceeding does not demonstrate that the disclosure requirement will unduly burden commercial television broadcasters, the Commission retains the authority to revisit this disclosure requirement should evidence of such burdens arise after the disclosure requirement is implemented or experience demonstrate that the benefits of this requirement are outweighed by its costs.

G. Diversity/Incubator Program

1. Introduction

107. The Commission grants in part and denies in part NAB's request for reconsideration regarding the Commission's decision in the *Second Report and Order* not to adopt an incubator program on the current record. The Commission agrees that it should adopt such a program and decides in this *Order* that it will do so. However, the Commission also finds that the underlying record fails to provide sufficient guidance on how best to structure such a program. Accordingly, the Commission adopts in this *Order* a Notice of Proposed Rulemaking seeking comment on how the Commission should structure the incubator program.

2. Background

108. As explained in greater detail in the accompanying Notice of Proposed Rulemaking, an incubator program would provide an ownership rule waiver or similar benefits to a company that establishes a program to help facilitate station ownership for a certain class of new owners. The concept of an incubator program has been discussed since at least the early 1990s. Yet, despite general support for the concept, the Commission has never undertaken the creation of a comprehensive incubator program. The Commission has adopted a limited program that provides a duopoly preference to parties that agree to incubate or finance an eligible entity. In adopting this general policy preference, however, the Commission did not provide details regarding the structure and operation of the incubation activities. As such, the Commission does not believe that this limited policy preference serves as an effective basis upon which to design a comprehensive incubator program.

109. Most recently, the Commission sought comment in the *NPRM* and *FNPRM* on whether to adopt an incubator program and, if so, how to structure such a program. In the *FNPRM,* in particular, the Commission highlighted administrative concerns and structural issues that needed to be addressed before such a program could be adopted. While there was general support for an incubator program, and some suggestions on how to structure certain aspects of such a program, the Commission found in the *Second Report and Order* that the record failed to address the specific concerns detailed in the *FNPRM;* accordingly, the

Commission declined to adopt an incubator program. NAB sought reconsideration of the Commission's rejection of NAB's recommendation for an incubator program. According to NAB, the Commission could create an incubator program based on the overcoming disadvantages preference (ODP) standard, which the Commission rejected in the *Second Report and Order,* or the new entrant criteria in the broadcast services' auction rules. The petition otherwise fails to address the many other issues of concern highlighted by the Commission in this proceeding.

3. Discussion

110. On reconsideration, the Commission agrees with NAB that it should adopt an incubator program and decides here that it will do so. There is support for an incubator program from many industry participants and advocacy groups. And the Commission agrees with supporters that adopting an incubator program would promote new entry and ownership diversity in the broadcast industry by helping address barriers to station ownership, such as lack of access to capital and the need for technical/operational experience. In this proceeding, however, the Commission has identified various, specific concerns regarding how to structure and monitor such a program. The Commission finds that the comments and recommendations in the record fail to adequately address all of these issues. While certain suggestions may have merit in regards to specific aspects of the program, the Commission is not yet at the point where it can finalize the overall structure and method for implementation of the program. Therefore, the Commission requires additional comment on how to structure the incubator program.

111. The Commission is initiating a new proceeding in the accompanying Notice of Proposed Rulemaking that will seek additional comment on how best to implement the Commission's incubator program. Initiating a dedicated proceeding will allow the Commission to focus its efforts on getting this program up and running, and the Commission anticipates that its consideration of this issue will be assisted by the newly established Advisory Committee on Diversity and Digital Empowerment.

IV. Procedural Matters

A. Supplemental Final Regulatory Flexibility Analysis

112. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Second Report and Order,* to the extent that changes adopted on reconsideration require changes to the information included and conclusions reached in the FRFA. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* that initiated this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Commission also incorporated a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) in the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM,* including comment on the Supplemental IRFA. The Commission received no comments in response to the IRFA or the Supplemental IRFA. This present Supplemental FRFA conforms to the RFA.

113. *Response to Public Comments and Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

114. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The final rules adopted in this *Order* affect small television and radio broadcast stations and small entities that operate daily newspapers. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

115. *Television Broadcasting.* This Economic Census category comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census data reports that 751 such firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more. Based on this data, the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

116. The Commission has estimated the number of licensed commercial television stations to be 1,382. Of this total, 1,262 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on May 9, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 393. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

117. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of small business is that the entity not be dominant in its field of operation. The Commission is unable at

this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television broadcast station from the definition of a small business on this basis and are therefore possibly over-inclusive. There are also 2,385 LPTV stations, including Class A stations, and 3,776 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard. Also, as noted above, an additional element of the definition of small business is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

118. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

119. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database on May 9, 2017, about 11,392 (or about 99.9 percent) of 11,401 of commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial radio stations to be 11,401. The Commission notes it has also estimated the number of licensed noncommercial radio stations to be 4,111. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

120. The Commission also notes, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of small business is that the entity not be dominant in its field of operation. The Commission further notes, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus the Commission's estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of small business is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

121. *Daily Newspapers.* The SBA has developed a small business size standard for the census category of Newspaper Publishers; that size standard is 1,000 or fewer employees. Business concerns included in this category are those that carry out operations necessary for producing and distributing newspapers, including gathering news; writing news columns, feature stories, and editorials; and selling and preparing advertisements. Census Bureau data for 2012 show that there were 4,168 firms in this category that operated for the entire year. Of this total, 4,107 firms had employment of 499 or fewer employees, and an additional 22 firms had employment of 500 to 999 employees. Therefore, the Commission estimates that the majority of Newspaper Publishers are small entities that might be affected by its action.

122. *Description of Reporting, Record Keeping, and other Compliance Requirements for Small Entities.* The *Order on Reconsideration* eliminates the Newspaper/Broadcast Cross-Ownership Rule and the Radio/Television Cross-Ownership Rule, modifies the Local Television Ownership Rule and, and eliminates the Television JSA Attribution Rule. The *Order on Reconsideration* does not adopt any new reporting, recordkeeping, or compliance requirements for small entities. The *Order on Reconsideration* thus will not impose additional obligations or expenditure of resources on small businesses. In addition, to conform to the elimination of the Television JSA Attribution Rule, parties to JSAs that were attributable under the previous rule will no longer be required to file the agreements with the Commission pursuant to section 73.3613 of the Commission's rules.

123. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

124. In conducting the quadrennial review, the Commission has three chief alternatives available for each of the Commission's media ownership rules—eliminate the rule, modify it, or, if the Commission determines that the rule is necessary in the public interest, retain it. The Commission finds that the modification and elimination of the rules in the *Order on Reconsideration,* which are intended to achieve the policy goals of competition, localism, and viewpoint diversity, will continue to benefit small entities by fostering a media marketplace in which they are better able to compete and by promoting additional broadcast ownership opportunities, as described below, among a diverse group of owners, including small entities. The Commission discusses below several ways in which the rules may benefit small entities as well as steps taken, and significant alternatives considered, to minimize any potential burdens on small entities.

125. *Newspaper/Broadcast Cross-Ownership (NBCO) Rule.* In the Order on Reconsideration, the Commission considered whether to retain, modify, or eliminate the NBCO Rule. The Commission determined that the NBCO Rule is no longer in the public interest and should be repealed. As an alternative to the action taken, the Commission considered whether to adopt a modified NBCO Rule, but rejected that approach as unsupported by the record. As a result, newspapers will be able to combine with television and radio stations within the same local

market, subject only to the Local Television and Local Radio Ownership Rules. Repeal of the NBCO Rule in its entirety eliminates the economic burden of compliance with the rule on small entities. Furthermore, repeal of the rule will allow broadcasters and local newspapers to seek out new sources of investment and operational expertise, potentially increasing the quantity and quality of local news and information they provide to consumers. Small broadcasters may find that merging with a newspaper could boost their ability to serve their local markets. The Order on Reconsideration finds that the NBCO Rule created considerable harm in small markets where the benefits of cross-ownership could have helped to sustain the local news outlets, many of which are likely to be small entities. Elimination of the rule will help promote additional investment opportunities for small entities in many local markets. The *Order on Reconsideration* also concludes that repeal of the NBCO Rule is unlikely to have a material effect on minority and female ownership of newspapers and broadcast stations.

126. *Radio/Television Cross-Ownership Rule.* In the *Order on Reconsideration,* the Commission considers whether to retain, modify, or eliminate the Radio/Television Cross-Ownership Rule. The Commission finds that the Radio/Television Cross-Ownership Rule no longer serves the public interest and should be repealed. The Commission considers whether to adopt a modified rule, but rejects that approach as unsupported by the record. Eliminating the rule allows television stations and radio stations in the same market to be commonly owned provided that such ownership arrangements otherwise comply with the Local Television and Local Radio Ownership Rules. As with the NBCO Rule, repeal of the Radio/Television Cross-Ownership Rule in its entirety eliminates the economic impact of the rule on small entities. Small entities in particular may benefit from the aforementioned efficiencies and benefits of common ownership enabled by the rule's repeal. The Commission also finds that repeal of the Radio/Television Cross-Ownership rule is unlikely to have an effect on minority and female ownership of broadcast television and radio stations.

127. *Local Television Ownership Rule.* In the *Order on Reconsideration,* the Commission finds that the existing Local Television Ownership Rule is no longer necessary in the public interest but should be modified further to enable television stations to compete more effectively. Accordingly, the Commission repeals the Eight-Voices Test that had required at least eight independently owned television stations to remain in a market after combining ownership of two stations in the market. The Commission considers whether to adopt a different voice test, but rejects that approach as unsupported by the record. In addition, the Commission considers whether to retain, modify, or eliminate the Top-Four Prohibition, a prohibition against common ownership of two top-four ranked stations in all markets. The Commission finds that the record generally supported the Commission's decision in the *Second Report and Order* to treat combinations involving two top-four rated stations differently than other combinations, but on reconsideration the Commission modifies the rule to include a case-by-case approach to account for circumstances in which strict application of the prohibition is not in the public interest. Under the new modified television ownership rule an entity may own two television stations in the same DMA if (1) the digital noise limited service contours (NLSCs) of the stations (as determined by section 73.622(e)) do not overlap; or (2) at least one of the stations is not ranked among the top four stations in the market. The Commission will consider combinations otherwise barred by the Top-Four Prohibition on a case-by-case basis.

128. The modifications to the Local Television Ownership Rule are not expected to create additional burdens for small entities. Conversely, the economic impact of the rule modification may benefit small entities by enabling them to achieve operational efficiencies through common ownership. The *Order on Reconsideration* also concludes that the modifications to the Local Television Ownership Rule are unlikely to have an effect on minority and female ownership of broadcast television stations.

129. *Television JSA Attribution Rule.* On reconsideration, the Commission considers whether to retain or eliminate the Television JSA Attribution Rule. The Commission finds that the rule was unsupported by the record and does not serve the public interest and therefore should be repealed. The repeal of the Television JSA Attribution Rule eliminates the economic burden of the rule on small entities. In the rapidly changing video marketplace, television JSAs help reduce costs and attract vital revenue at a time of increasing competition for advertising and viewership. Efficiencies provided by JSAs also enable broadcasters to improve or increase services for local communities, thus fostering significant public interest benefits. Local television broadcasters—particularly in small- and medium-sized markets—stand to benefit from these efficiencies that television JSAs create. The repeal of the attribution rule will remove a regulatory disincentive for stations to enter into JSAs and enable these stations to better serve their communities. In addition, because of the elimination of the Television JSA Attribution Rule, parties to JSAs that were attributable under the previous rule will no longer be required to file the agreements with the Commission, thus eliminating that economic burden.

B. Paperwork Reduction Act Analysis

130. This *Order on Reconsideration* contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements 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 information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Congressional Review Act

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

V. Ordering Clauses

132. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303, 307, 309, 310, and 403, and Section 202(h) of the Telecommunications Act of 1996, this Order on Reconsideration *is adopted.*

133. *It is further ordered* that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR

1.429, that the petitions for reconsideration filed by (1) Connoisseur Media, LLC *is granted, in part, and otherwise denied* as set forth herein; (2) the National Association of Broadcasters *is granted, in part, and otherwise denied* as set forth herein; and (3) Nexstar Broadcasting, Inc. *is granted, in part, and otherwise denied* as set forth herein.

134. *It is further ordered* that UCC et al.'s Motion to Strike and Dismiss *is denied* as set forth herein.

135. *It is further ordered* that the Order on Reconsideration and the rule modifications attached hereto *shall be effective* February 7, 2018, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective on the effective date announced in the **Federal Register** notice announcing OMB approval.

136. *It is further ordered,* that the proceedings MB Docket No. 04–256, MB Docket No. 09–182, and MB Docket No. 14–50 *are terminated.*

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

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

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336 and 339.

■ 2. Amend § 73.3555 as follows:
■ a. Revise paragraph (b);
■ b. Remove and reserve paragraphs (c) and (d);
■ c. Revise the introductory text, paragraphs a. through d., and paragraphs g. through k. of Note 2 to § 73.3555;
■ d. Revise Notes 4 through 7 to § 73.3555;
■ e. Revise Note 9 to § 73.3555; and
■ f. Remove Note 12 to § 73.3555.

The revisions read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(b) *Local television multiple ownership rule.* (1) An entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) if:

(i) The digital noise limited service contours of the stations (computed in accordance with § 73.622(e)) do not overlap; or

(ii) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service.

(2) Paragraph (b)(1)(ii) (Top-Four Prohibition) of this section shall not apply in cases where, at the request of the applicant, the Commission makes a finding that permitting an entity to directly or indirectly own, operate, or control two television stations licensed in the same DMA would serve the public interest, convenience, and necessity. The Commission will consider showings that the Top-Four Prohibition should not apply due to specific circumstances in a local market or with respect to a specific transaction on a case-by-case basis.

(c)–(d) [Reserved]

* * * * *

Note 2 to § 73.3555:

In applying the provisions of this section, ownership and other interests in broadcast licensees will be attributed to their holders and deemed cognizable pursuant to the following criteria:

a. Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee will be cognizable;

b. Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate broadcast licensee, or if any of the officers or directors of the broadcast licensee are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

c. Attribution of ownership interests in a broadcast licensee that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph i. of this note, attribution of ownership interests in a broadcast licensee that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph i. of this note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in ''Licensee'' would be 2.5% (0.1×0.25). Under the 5% attribution benchmark, X's interest in ''Licensee'' would be cognizable, while A's interest would not be cognizable. For purposes of paragraph i. of this note, X's interest in ''Licensee'' would be 15% (0.6×0.25) and A's interest in ''Licensee'' would be 1.5% ($0.1 \times 0.6 \times 0.25$). Neither interest would be attributed under paragraph i. of this note.]

d. Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee are subject to said trust.

* * * * *

g. Officers and directors of a broadcast licensee are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report.] The officers and directors of a sister corporation of a broadcast licensee shall not be attributed with ownership of that licensee by virtue of such status.

h. Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

1. The sum of the interests held by or through ''passive investors'' is equal to or exceeds 20 percent; or

2. The sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 5 percent; or

3. The sum of the interests computed under paragraph h. 1. of this note plus the sum of the interests computed under paragraph h. 2. of this note is equal to or exceeds 20 percent.

i.1. Notwithstanding paragraphs e. and f. of this Note, the holder of an equity or debt interest or interests in a broadcast licensee subject to the broadcast multiple ownership rules (''interest holder'') shall have that interest attributed if:

A. The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that broadcast licensee; and

B.(i) The interest holder also holds an interest in a broadcast licensee in the same market that is subject to the broadcast multiple ownership rules and is attributable under paragraphs of this note other than this paragraph i.; or

(ii) The interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held. For purposes of applying this paragraph, the term, ''market,'' will be defined as it is defined under the specific multiple ownership rule that is being applied, except that for television stations, the term ''market'' will be defined by reference to the definition contained in the local television multiple ownership rule contained in paragraph (b) of this section.

2. Notwithstanding paragraph i.1. of this Note, the interest holder may exceed the 33 percent threshold therein without triggering attribution where holding such interest would enable an eligible entity to acquire a broadcast station, provided that:

i. The combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or

ii. The total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. For purposes of this paragraph i.2, an ''eligible entity'' shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121.201, at the time the transaction is approved by the FCC, and holds:

A. 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

B. 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

C. More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

j. ''Time brokerage'' (also known as ''local marketing'') is the sale by a licensee of discrete blocks of time to a ''broker'' that supplies the programming to fill that time and sells the commercial spot announcements in it.

1. Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraph (a) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

2. Where two television stations are both located in the same market, as defined in the local television ownership rule contained in paragraph (b) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (b) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

3. Every time brokerage agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraph (b) of this section if the brokering station is a television station or with paragraph (a) of this section if the brokering station is a radio station.

k. ''Joint Sales Agreement'' is an agreement with a licensee of a ''brokered station'' that authorizes a ''broker'' to sell advertising time for the ''brokered station.''

1. Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station sells more than 15 percent of the advertising time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraph (a) of this section.

2. Every joint sales agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the limitations set forth in paragraph (a) of this section if the brokering station is a radio station.

* * * * *

Note 4 to § 73.3555:

Paragraphs (a) and (b) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy, or to FM or AM broadcast minor modification applications for intra-market community of license changes, if no new or increased concentration of ownership would be created among commonly owned, operated or controlled broadcast stations. Paragraphs (a) and (b) of this section will apply to all applications for new stations, to all other applications for assignment or transfer, to all applications for major changes to existing stations, and to all other applications for minor changes to existing stations that seek a change in an FM or AM radio station's community of license or create new or increased concentration of ownership among commonly owned, operated or controlled broadcast stations. Commonly owned, operated or controlled broadcast stations that do not comply with paragraphs (a) and (b) of this section may not be assigned or transferred to a single person, group or entity, except as provided in this Note, the Report and Order in Docket No. 02–277, released July 2, 2003 (FCC 02–127), or the Second Report and Order in MB Docket No. 14–50, FCC 16–107 (released August 25, 2016).

Note 5 to § 73.3555:

Paragraphs (b) and (e) of this section will not be applied to cases involving television stations that are ''satellite'' operations. Such cases will be considered in accordance with the analysis set forth in the Report and Order in MM Docket No. 87–8, FCC 91–182 (released July 8, 1991), in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating ''satellite'' television station, the digital noise limited service contour of which overlaps that of a commonly owned, operated, or controlled ''non-satellite'' parent television broadcast station may subsequently become a ''non-satellite'' station under the circumstances described in the aforementioned Report and Order in MM Docket No. 87–8. However, such commonly owned, operated, or controlled ''non-satellite'' television stations may not be transferred or assigned to a single person, group, or entity except as provided in Note 4 of this section.

Note 6 to § 73.3555:

Requests submitted pursuant to paragraph (b)(2) of this section will be considered in accordance with the analysis set forth in the Order on Reconsideration in MB Docket Nos. 14–50, et al. (FCC 17–156).

Note 7 to § 73.3555:

The Commission will entertain applications to waive the restrictions in paragraph (b) of this section (the local television ownership rule) on a case-by-case basis. In each case, we will require a showing that the in-market buyer is the only entity ready, willing, and able to operate the station, that sale to an out-of-market applicant would result in an artificially depressed price, and that the waiver applicant does not already directly or indirectly own, operate, or control interest in two television stations within the relevant DMA. One way to satisfy these criteria would be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit, and that no reasonable offer from an entity outside the market has been received.

We will entertain waiver requests as follows:

1. If one of the broadcast stations involved is a ''failed'' station that has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application.

2. If one of the television stations involved is a ''failing'' station that has an all-day audience share of no more than four per cent; the station has had negative cash flow for three consecutive years immediately prior to the application; and consolidation of the two stations would result in tangible and verifiable public interest benefits that outweigh any harm to competition and diversity.

3. If the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.

* * * * *

Note 9 to § 73.3555

Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605–1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535–1605 kHz band that is commonly owned, operated or controlled.

* * * * *

■ 3. Amend § 73.3613 by revising paragraph (d)(2) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(d) * * *

(2) *Joint sales agreements:* Joint sales agreements involving radio stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in § 73.3555(a), and more than 15 percent of the advertising time of the brokered station on a weekly basis is brokered by that licensee. Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

* * * * *

[FR Doc. 2017–28329 Filed 1–5–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 170627602–7999–02]

RIN 0648–BG98

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Whiting; Pacific Coast Groundfish Fishery Management Plan; Amendment 21–3; Trawl Rationalization Program

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to change the management of the Pacific whiting at-sea sectors' (*i.e.,* the Mothership [MS] and Catcher/Processor [C/P] sectors) allocations for darkblotched rockfish and Pacific ocean perch (POP) by managing the allocations as set-asides rather than as total catch limits, under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule revises regulations in accordance with

Amendment 21–3 to the FMP (see electronic access under **SUPPLEMENTARY INFORMATION**) so that higher than anticipated harvest of darkblotched rockfish or POP that exceeds a sector's initial distribution of those species will not require automatic closure of one or more of the Pacific whiting at-sea sectors. This action is intended to reduce the risk of the Pacific whiting at-sea sectors not attaining their respective Pacific whiting allocations due to the incidental catch of darkblotched rockfish or POP causing early closure of those sectors. This action does not change or increase the risk of exceeding darkblotched rockfish or POP ACLs, because it also allows NMFS to close one or both of the Pacific whiting at-sea sectors via automatic action if the species-specific set-aside amounts plus the available reserve for unforeseen catch events, known colloquially as the ''buffer,'' are anticipated to be exceeded. This rule will ensure that the Pacific whiting fishery is managed in accordance with the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Effective February 7, 2018.

FOR FURTHER INFORMATION CONTACT: Frank Lockhart (West Coast Region, NMFS), phone: 206–526–6140 and email: *Frank.Lockhart@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov*. Background information and documents are available at the NMFS West Coast Region website at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development*.

Background information and documents are available at the NMFS West Coast Region website at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/*.

Background

Pacific Whiting Fishery

Bycatch of rockfish species in the Pacific whiting fishery occurs at very low rates, but sporadically and unpredictably. Regulations at 50 CFR 660.55 address the allocation of these rockfish. Darkblotched rockfish and POP are caught almost exclusively by vessels in the shorebased Individual Fishing Quota (IFQ) and at-sea Pacific whiting sectors of the groundfish fishery. NMFS declared both species overfished in 2000 and 1999, respectively, and both stocks have been managed under rebuilding plans as a result. Populations of both species have shown dramatic improvement in recent years. Darkblotched rockfish and POP were both declared rebuilt in 2017. Darkblotched rockfish and POP are both currently managed as allocations, and NMFS automatically closes a fishery sector when it has reached its allocation of either species.

In recent years, both at-sea sectors of the Pacific whiting fishery have exceeded their initial annual allocation of darkblotched rockfish (C/P sector in 2011, and the MS sector in 2014). The latter resulted in an emergency Pacific Fishery Management Council (Council) meeting in order to re-open the fishery. Without implementation of this rule, the risk of an inseason closure of these sectors remains high, although the ACLs of these rockfish are far from being reached. For example, the most recent fishing mortality estimates by NMFS' Northwest Fisheries Science Center indicate that 42 percent of both the darkblotched rockfish and POP ACLs were caught in 2016. While harvest of these species at a level below the ACL may have helped to rebuild stocks more quickly, there is a negative socioeconomic impact from preventing harvest of Pacific whiting, as intended in the FMP.

Current Allocations Under Amendment 21

The Council established allocations of darkblotched rockfish and POP for the Pacific whiting at-sea sectors in Amendment 21 to the FMP. When the Council considered allocation of these species, the analysis only incorporated data on catch through 2005, and took the overfished status of the species into account. Ten years of additional data on bycatch in the at-sea sectors are now available. Additionally, six full years of the Shorebased IFQ Program (which was implemented in 2011, 75 FR 60868) fishery information is available. This new information indicates that the stocks of both species are currently much healthier than they were at the time Amendment 21 was implemented, and they are no longer overfished.

The Council's Amendment 21 allocation recommendation was based, in part, on the idea that the C/P and MS sectors could avoid early closures by moving to areas of lower rockfish encounter rates if they were approaching a bycatch allocation. However, experience has shown that this assumption was likely too simplistic. Despite the mitigating measures enacted by the C/P and MS coops, darkblotched rockfish bycatch remains particularly variable, with the potential for rapid accumulation. The 2014 closure of the MS sector provides an illustration: Closure occurred after six hauls caught 4.5 mt of darkblotched rockfish, which was nearly 75 percent of their 2014 allocation, with the most of that catch coming from three of the hauls. Some of the largest hauls were delivered to motherships so closely in time that feedback on the size of the catches from observers came too late for the MS coop to effectively respond. Prior to this ''lightning strike'' event, the sector had made 969 hauls and caught only 2.5 mt of darkblotched rockfish. After the sector was re-opened by an emergency meeting of the Council, the sector made 330 additional hauls that brought in over 14,500 mt of Pacific whiting and only 0.1 mt of additional darkblotched rockfish. The C/P sector has experienced even more rapid accumulations of darkblotched rockfish bycatch, and would have been closed late in the 2011 season if unused allocation had not been available from the MS sector, which had already completed fishing for the year. These events indicate that the current management structure may be adversely impacting the at-sea sectors to a greater degree than was anticipated when the Council adopted the current allocation structure under Amendment 21, due to unpredictability and high volume of bycatch events.

Amendment 21–3

The Council has discussed a variety of solutions to reduce the risk of closure of the Pacific whiting at-sea sectors prior to attainment of their Pacific whiting allocations, such as allowing the transfer of rockfish quota between sectors, but it determined that those solutions were too complex to be analyzed and implemented in a timely manner. At its September 2016 meeting, the Council recommended the interim measure of amending the FMP and implementing revised regulations, so that the amounts of darkblotched rockfish and POP allocated to the C/P and MS sectors are managed as set-asides rather than as total catch limits. The Council also recommended giving NMFS inseason authority to automatically close one or both of the C/P and MS sectors in the event the species-specific set-aside amounts plus the available reserve for unforeseen catch events, known colloquially as the ''buffer,'' are anticipated to be exceeded.

This action does not revise allocations between sectors, which were set by Amendment 21 to the FMP, and is intended to be an interim solution to address the immediate needs of the C/P and MS sectors. Long-term solutions are being reviewed by the Council as part of the 5-year review of the trawl rationalization program. A long-term solution to address the needs of the Pacific whiting at-sea sectors should focus specifically on fairly and equitably revising the allocation between the trawl sectors, and among all the groundfish fishery sectors, while leaving any applicable stock rebuilding plans unaffected.

Intent of the Action

This action is intended to substantially reduce the risk of the Pacific whiting at-sea sectors not attaining their respective Pacific whiting allocations based on the incidental catch of darkblotched rockfish or POP, when allowing the sector(s) to remain open would not exceed ACLs for these rebuilding stocks. It revises regulations so that higher than anticipated harvest of darkblotched rockfish or POP that exceeds the initial distribution of those species to the at-sea sectors will not require automatic closure of one or more of the at-sea sectors.

The rule also allows NMFS to close one or both of the C/P and MS sectors of the Pacific whiting fishery via automatic action when the set-aside for that sector, plus the available reserve for unforeseen catch events, is reached or is expected to be reached for either darkblotched rockfish or POP. Because of near real-time monitoring by the C/P and MS Coop Programs, and the ability of those programs to respond quickly to changing fishery conditions, closures will occur before allocations to other fisheries or the ACLs are reached, thus limiting the potential effects and precluding potential negative biological and socioeconomic impacts of this action.

Comments and Responses

NMFS published a notice of availability of Amendment 21–3 to the FMP (82 FR 44984) on September 27, 2017, and a proposed rule for this action (82 FR 50106) on October 30, 2017. The comment periods for the FMP amendment and the proposed rule closed on November 27, 2017. NMFS received one public comment in support of the proposed action. No changes were made from the proposed rule or proposed FMP amendment based on public comments.

Classification

The Administrator, West Coast Region Region, NMFS, determined that FMP Amendment 21–3 is necessary for the conservation and management of the West Coast Groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

NMFS determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal management programs of Washington, Oregon, and California programs. This determination was submitted for review by the responsible state agencies under section 307 of the CZMA. The state agencies agreed with this determination.

There are no reporting or recordkeeping requirements associated with this final rule. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

Pursuant to Executive Order 13175, this final rule was developed after meaningful collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 3, 2018.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.55, revise paragraphs (c)(1)(i) introductory text and (c)(1)(i)(A) and (B) to read as follows:

§ 660.55 Allocations.

* * * * *

(c) * * *

(1) * * *

(i) *Trawl fishery allocation.* The allocation for the limited entry trawl fishery is derived by applying the trawl allocation percentage by species/species group and area as specified in paragraph (c) of this section and as specified during the biennial harvest specifications process to the fishery harvest guideline for that species/species group and area. For IFQ species other than-darkblotched rockfish, Pacific ocean perch, and widow rockfish, the trawl allocation will be further subdivided among the trawl sectors (MS, C/P, and IFQ) as specified in §§ 660.140, 660.150, and 660.160 of subpart D. For darkblotched rockfish, Pacific ocean perch, and widow rockfish, the trawl allocation is further subdivided among the trawl sectors (MS, C/P, and IFQ) as follows:

(A) *Darkblotched rockfish.* Distribute 9 percent or 25 mt, whichever is greater, of the total trawl allocation of darkblotched rockfish to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sectors). The distribution of allocation of darkblotched rockfish to each of these sectors will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. Darkblotched rockfish distributed to the MS sector and C/P sector are managed as set-asides at Table 2d, subpart C. The allocation of darkblotched rockfish to the Pacific whiting IFQ fishery contributes to the Shorebased IFQ allocation. After deducting allocations for the Pacific whiting fishery, the remaining trawl allocation is allocated to the Shorebased IFQ Program.

(B) *Pacific Ocean Perch (POP).* Distribute 17 percent or 30 mt, whichever is greater, of the total trawl allocation of POP to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sector). The distribution of POP to each sector will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. POP distributed to the MS sector and C/P sector are managed as set-asides, at Table 2d, subpart C. The allocation of POP to the Pacific whiting IFQ fishery contributes to the Shorebased IFQ allocation. After deducting allocations for the Pacific whiting fishery, the remaining trawl allocation is allocated to the Shorebased IFQ Program.

* * * * *

■ 3. In § 660.60, add paragraph (d)(1)(vii) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) * * *

(1) * * *

(vii) Close one or both the MS or C/P sector when the set-aside for that sector, described in Table 2d, subpart C, plus the available reserve for unforeseen catch events, described in Table 2a, subpart C, combined, is reached or is expected to be reached for either darkblotched rockfish or Pacific ocean perch.

* * * * *

■ 4. In subpart C, revise Table 2b to Part 660 to read as follows:

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Table 2b. to Part 660, Subpart C – 2018, and Beyond, Allocations by Species or Species Group (Weight in Metric Tons)

Species	Area	Fishery HG or ACT	Trawl		Non-trawl	
			Percent	Mt	Percent	Mt
BOCACCIO a/	S. of 40º10' N. lat.	725.6	39	283.3	61	442.3
COWCOD a/b/	S. of 40º10' N. lat.	4.0	36	1.4	64	2.6
DARKBLOTCHED ROCKFISH c/	Coastwide	575.8	95	547.0	5	28.8
PACIFIC OCEAN PERCH d/	N. of 40º10' N. lat.	231.6	95	220.0	5	11.6
YELLOWEYE ROCKFISH a/	Coastwide	14.0	NA	1.1	NA	12.9
Arrowtooth flounder	Coastwide	11,644.9	95	11,062.6	5	582.2
Big skate a/	Coastwide	436.6	95	414.8	5	21.8
Canary rockfish a/e/	Coastwide	1,466.6	NA	1,060.1	NA	406.5
Chilipepper	S. of 40º10' N. lat.	2,461.1	75	1,845.8	25	615.3
Dover sole	Coastwide	48,406.3	95	45,986.0	5	2,420.3
English sole	Coastwide	7,324.2	95	6,958.0	5	366.2
Lingcod	N. of 40º10' N. lat.	2,831.8	45	1,274.3	55	1,557.5
Lingcod	S. of 40º10' N. lat.	1,135.0	45	510.8	55	624.3
Longnose skate a/	Coastwide	1,853.0	90	1,667.7	10	185.3
Longspine thornyhead	N. of 34º27' N. lat.	2,700.2	95	2,565.2	5	135.0
Pacific cod	Coastwide	1,091.0	95	1,036.4	5	54.5
Pacific whiting	Coastwide	TBD	100	TBD	0	TBD
Petrale sole	Coastwide	2,772.1	95	2,633.5	5	138.6
Sablefish	N. of 36º N. lat.	N/A	See Table 2c			
Sablefish	S. of 36º N. lat.	1,939.0	42	814.4	58	1,124.6
Shortspine thornyhead	N. of 34º27' N. lat.	1,639.0	95	1,557.0	5	81.9
Shortspine thornyhead	S. of 34º27' N. lat.	855.7	NA	50.0	NA	805.7
Splitnose rockfish	S. of 40º10' N. lat.	1,750.3	95	1,662.8	5	87.5
Stary flounder	Coastwide	1,271.7	50	635.9	50	635.9
Widow rockfish f/	Coastwide	12,437.3	91	11,317.9	9	1,119.4
Yellowtail rockfish	N. of 40º10' N. lat.	4,972.1	88	4,375.4	12	596.6
Minor Shelf Rockfish a/	N. of 40º10' N. lat.	1,963.2	60	1,181.8	40	781.4
Minor Slope Rockfish	N. of 40º10' N. lat.	1,688.9	81	1,368.0	19	320.9
Minor Shelf Rockfish a/	S. of 40º10' N. lat.	1,576.8	12	192.37	88	1,384.4
Minor Slope Rockfish	S. of 40º10' N. lat.	688.8	63	433.9	37	254.9
Other Flatfish	Coastwide	7,077.0	90	6,369.3	10	707.7

a/ Allocations decided through the biennial specification process.

b/ The cowcod fishery harvest guideline is further reduced to an ACT of 4.0 mt.

c/ Consistent with regulations at §660.55(c), 9 percent (49.2 mt) of the total trawl allocation for darkblotched rockfish is allocated to the Pacific whiting fishery, as follows: 20.7 mt for the Shorebased IFQ Program, 11.8 mt is managed as a set-aside for the MS sector, and 16.7 mt is managed as a set-aside for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

d/ Consistent with regulations at §660.55(c), 17 percent (37.4 mt) of the total trawl allocation for POP is allocated to the Pacific whiting fishery, as follows: 15.7 mt for the Shorebased IFQ Program, 9.0 mt is managed as a set-aside the MS sector, and 12.7 mt is managed as a set-aside for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

e/ Canary rockfish is allocated approximately 72 percent to trawl and 28 percent to non-trawl. 46 mt of the total trawl allocation of canary rockfish is allocated to the MS and C/P sectors, as follows: 30 mt for the MS sector, and 16 mt for the C/P sector.

f/ Consistent with regulations at §660.55(c), 10 percent (1,131.8 mt) of the total trawl allocation for widow rockfish is allocated to the Pacific whiting fishery, as follows: 475.4 mt for the Shorebased IFQ Program, 271.6 mt for the MS sector, and 384.8 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

BILLING CODE 3510–22–C

■ 5. In subpart C, revise Table 2d to Part 660 to read as follows:

BILLING CODE 3510–22–P

Table 2d. To Part 660, Subpart C - At-Sea Whiting Fishery Annual Set-Asides, 2018 and Beyond

Species or Species Complex	Area	Set Aside (mt)
BOCACCIO	S. of 40°10 N. lat.	NA
COWCOD	S. of 40°10 N. lat.	NA
DARKBLOTCHED ROCKFISH a/	Coastwide	28.5
PACIFIC OCEAN PERCH b/	N. of 40°10 N. lat.	21.7
YELLOWEYE ROCKFISH	Coastwide	0
Arrowtooth flounder	Coastwide	70
Canary rockfish c/	Coastwide	Allocation
Chilipepper	S. of 40°10 N. lat.	NA
Dover sole	Coastwide	5
English sole	Coastwide	5
Lingcod	N. of 40°10 N. lat.	15
Lingcod	S. of 40°10 N. lat.	NA
Longnose skate	Coastwide	5
Longspine thornyhead	N. of 34°27 N. lat.	5
Longspine thornyhead	S. of 34°27 N. lat.	NA
Minor Nearshore Rockfish	N. of 40°10 N. lat.	NA
Minor Nearshore Rockfish	S. of 40°10 N. lat.	NA
Minor Shelf Rockfish	N. of 40°10 N. lat.	35
Minor Shelf Rockfish	S. of 40°10 N. lat.	NA
Minor Slope Rockfish	N. of 40°10 N. lat.	100
Minor Slope Rockfish	S. of 40°10 N. lat.	NA
Other Fish	Coastwide	NA
Other Flatfish	Coastwide	20
Pacific cod	Coastwide	5
Pacific Halibut d/	Coastwide	10
Pacific Whiting	Coastwide	Allocation
Petrale sole	Coastwide	5
Sablefish	N. of 36° N. lat.	50
Sablefish	S. of 36° N. lat.	NA
Shortspine thornyhead	N. of 34°27 N. lat.	20
Shortspine thornyhead	S. of 34°27 N. lat.	NA
Starry flounder	Coastwide	5
Widow Rockfish c/	Coastwide	Allocation
Yellowtail rockfish	N. of 40°10 N. lat.	300

a/ Darkblotched rockfish will be managed as set-asides for the MS and C/P sectors based on pro-rata distribution described at §660.55(c)(1)(i)(A), resulting in a set-aside of 11.8 mt for the MS sector, and a set-aside of and 16.7 mt for C/P sector.

b/ POP will be managed as set-asides for the MS and C/P sectors based on pro-rata distribution described at §660.55(c)(1)(i)(B), resulting in a set-aside of 9.0 mt for the MS sector, and a set-aside of and 12.7 mt for the C/P sector.

c/ See Table 1.b., to Subpart C, for the at-sea whiting allocations for these species.

d/ As stated in §660.55 (m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10 N. lat. (estimated to be approximately 5 mt each).

BILLING CODE 3510–22–C

■ 6. In § 660.150, revise paragraphs (c)(1)(i) and (ii) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(c) * * *

(1) * * *

(i) Species with formal allocations to the MS Coop Program are Pacific whiting, canary rockfish, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Coop Programs, as described in Table 2d, subpart C.

* * * * *

■ 7. In § 660.160, revise paragraphs (c)(1)(i) and (ii) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(c) * * *

(1) * * *

(i) Species with formal allocations to the C/P Coop Program are Pacific whiting, canary rockfish, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Programs, as described in Table 2d, subpart C.

* * * * *

[FR Doc. 2018–00135 Filed 1–5–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 83, No. 5

Monday, January 8, 2018

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0612; FRL–9972–81—Region 9]

Approval of California Air Plan Revisions, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). This revision concerns the District's demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). The EPA previously proposed to disapprove YSAQMD's 2006 RACT SIP submittal for the 1997 8-hour ozone NAAQS because we found that existing District rules implemented RACT for many but not all applicable sources. The YSAQMD has since addressed these deficiencies by adopting approvable rules that implement RACT and by adopting negative declarations where the District concluded it had no sources subject to RACT requirements. Therefore, we withdraw our previous proposed disapproval of YSAQMD's 2006 RACT SIP and now propose to approve it into the California SIP. The EPA is also proposing to approve YSAQMD's negative declarations into the SIP for the 1997 8-hour ozone NAAQS.

We are proposing to approve local SIP revisions under the Clean Air Act (CAA or Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by February 7, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2008–0612 at *https://www.regulations.gov,* or via email to Stanley Tong, at *tong.stanley@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

Table of Contents

I. The State's Submittal

A. What documents did the State submit?

On September 13, 2006, the YSAQMD adopted its "Reasonably Available Control Technology (RACT) State Implementation Plan (SIP)" ("2006 RACT SIP") analysis to demonstrate its stationary sources are subject to RACT rules for the 1997 8-hour ozone standard. On January 31, 2007, the California Air Resources Board (CARB) submitted it to the EPA for approval as a revision to the California SIP. On July 31, 2007, the submittal was deemed complete by operation of law. On August 18, 2008, the EPA proposed action on YSAQMD's 2006 RACT SIP and stated that four deficiencies prevented full approval of the submittal.

On December 22, 2017, CARB transmitted the District's public draft version of negative declarations for four Control Techniques Guidelines (CTG) documents along with a request for parallel processing.[1] The District plans to adopt negative declarations for CTGs covering the Manufacture of Synthesized Pharmaceutical Products, Wood Furniture Manufacturing Operations, Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (SOCMI), and Reactor Processes and Distillation Operations in SOCMI.[2] The negative declarations are being adopted because the District states it does not have stationary sources subject to these CTGs. As noted in footnote 1 of this document, under our parallel processing procedure, the EPA proposes action on a public draft version of a SIP revision but will take final action only after the final version is adopted and submitted to the EPA for approval. In this instance,

[1] Under the EPA's "parallel processing" procedure, the EPA proposes rulemaking action concurrently with the state's proposed rulemaking. If the state's proposed rule is changed, the EPA will evaluate that subsequent change and may publish another notice of proposed rulemaking. If no significant change is made, the EPA will publish a final rulemaking on the rule after responding to any submitted comments. Final rulemaking action by the EPA will occur only after the rule has been fully adopted by California and submitted formally to the EPA for incorporation into the SIP. See 40 CFR part 51, appendix V.

[2] The Yolo-Solano AQMD's Governing Board is scheduled to consider adopting the four negative declarations on January 10, 2018. See public hearing notice available at *http://www.ysaqmd.org/news/public-hearing-notice-negative-declarations-four-control-techniques-guidelines/.*

we are proposing action based on the public draft version of the negative declarations transmitted by CARB on December 22, 2017, and will not take final action until the final version of the negative declarations is adopted and submitted to the EPA. CARB's December 22, 2017 letter states that the YSAQMD Governing Board is scheduled to consider adoption of the negative declarations on January 10, 2018, and if it is approved, CARB will submit the final package to the EPA as a revision to the SIP.

B. Are there other versions of these documents?

There are no previous versions of the documents described above in the YSAQMD portion of the California SIP for the 1997 8-hour ozone NAAQS.

C. What is the purpose of the submitted documents?

Volatile Organic Compounds (VOCs) and Nitrogen Oxides (NO_X) together produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC and NO_X emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by a CTG document and for any major source of VOCs or NO_X. The YSAQMD is subject to this requirement because it regulates part of the Sacramento Metro ozone nonattainment area that was previously designated and classified as a Serious nonattainment area for the 1997 8-hour ozone NAAQS and is currently classified as a Severe-15 ozone nonattainment area for the 1997 8-hour ozone NAAQS.[3] Therefore, the YSAQMD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or NO_X within the nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 50 tons per year (tpy) of VOCs or NO_X is a major stationary source in a Serious ozone nonattainment area (CAA section 182(c), (f), and 302(j)), and any stationary source that emits or has the potential to emit at least 25 tpy of VOCs or NO_X is a major stationary source in a Severe ozone nonattainment area (CAA sections 182(d) and (f)). YSAQMD's 2006 RACT SIP reviewed for RACT major stationary sources that emit or had the potential to emit at least 25 tpy of VOC or NO_X.[4]

Section IV.G of the preamble to the EPA's final rule to implement the 1997 8-hour ozone NAAQS (70 FR 71612, November 29, 2005) discusses RACT requirements. It states in part that where a RACT SIP is required, states implementing the 8-hour standard generally must assure that RACT is met, either through a certification that previously required RACT controls still represent RACT for 8-hour implementation purposes or through a new RACT determination. The submitted documents provide YSAQMD's analyses of its compliance with the CAA section 182 RACT requirements for the 1997 8-hour ozone NAAQS. The EPA's technical support documents (TSDs)[5] have more information about the District's submissions and the EPA's evaluations thereof.

II. The EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the submitted documents?

SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOCs or NO_X in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The YSAQMD regulates a Severe ozone nonattainment area (see 40 CFR 81.305) so the District's rules must implement RACT.

States should also submit for SIP approval negative declarations for those source categories for which they are not adopting CTG-based regulations (because they have no sources above the CTG recommended applicability threshold) regardless of whether such negative declarations were made for an earlier SIP.[6] To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist or are planned for the YSAQMD.

The District's analysis must demonstrate that each major source of NO_X or VOCs in the nonattainment area is covered by a RACT-level rule. In addition, for each CTG source category, the District must either demonstrate that a RACT-level rule is in place, or submit a negative declaration. Guidance and policy documents that we use to evaluate CAA section 182 RACT requirements include the following:

1. "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2": (70 FR 71612; November 29, 2005).
2. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
3. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
4. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
5. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.
6. Memorandum from William T. Harnett to Regional Air Division Directors, (May 18, 2006), "RACT Qs & As—Reasonably Available Control Technology (RACT) Questions and Answers."
7. RACT SIPs, Letter dated March 9, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) describing Region IX's understanding of what constitutes a minimally acceptable RACT SIP.
8. RACT SIPs, Letter dated April 4, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) listing EPA's current CTGs, Alternative Control Techniques (ACTs), and other documents which may help to establish RACT.

With respect to major stationary sources, the Sacramento Metro ozone nonattainment area was classified as "Serious" nonattainment for the 1997 8-hour ozone NAAQS at the time that California submitted the YSAQMD 2006 RACT SIP to the EPA. The Sacramento Metro ozone nonattainment area was subsequently reclassified to "Severe" ozone nonattainment. YSAQMD's 2006 RACT SIP lists major stationary sources within its jurisdiction that emit or have the potential to emit at least 25 tpy of VOC or NO_X—the threshold associated with major stationary sources in Severe ozone nonattainment areas.

B. Do the submitted documents meet the evaluation criteria?

Our August 18, 2008 proposed disapproval rulemaking and associated 2008 RACT SIP TSD provide an extensive evaluation of YSAQMD's 2006 RACT SIP and negative declarations. See 73 FR 48166. The August 18, 2008 proposal found that the District's

[3] 40 CFR 81.305; 75 FR 24409 (May 5, 2010). The YSAQMD regulates the Solano County and Yolo County portions of the Sacramento Metro ozone nonattainment area.

[4] YSAQMD 2006 RACT SIP pages 6 and 9.

[5] The docket for this proposed action (*https://www.regulations.gov/docket?D=EPA-R09-OAR-2008-0612*) contains two TSDs. One supported our August 18, 2008 proposed action (73 FR 48166) on the 2006 YSAQMD RACT SIP (2008 RACT SIP TSD). Although we are withdrawing our August 18, 2008 proposed disapproval, the 2008 RACT SIP TSD contains pertinent information and analysis that support our current action. The second TSD supports today's action, and is dated December 2017 (2017 RACT SIP TSD).

[6] 57 FR 13498, 13512 (April 16, 1992).

submission generally met the CAA section 182 RACT requirements, with the exception of the following four deficiencies that prevented full approval of YSAQMD's 2006 RACT SIP:

1. YSAQMD identified three major non-CTG sources in the District that were not covered by RACT rules or SIP approved permits. Such rules or permits should be submitted to the EPA for approval.

Complete—YSAQMD adopted the following rules and the EPA approved them into the SIP:

Rule 2.41 Expandable Polystyrene Manufacturing Operations (adopted September 10, 2008); SIP approved September 8, 2011 (76 FR 55581).

Rule 2.42 Nitric Acid Production (adopted May 13, 2009); SIP approved on May 10, 2010 (75 FR 25778).

Rule 2.43 Biomass Boilers (adopted November 10, 2010); SIP approved July 2, 2012.

2. YSAQMD's pharmaceutical manufacturing rule may be less stringent than the CTG. Rule 2.35 Pharmaceutical Manufacturing Operations should be revised and submitted to the EPA for approval.

Parallel processing negative declaration—YSAQMD determined that emissions from pharmaceutical manufacturing operations are well below the CTG's applicability threshold. The primary process at its facility performing pharmaceutical manufacturing operations involves fermentation, which is exempted by a supporting document that helps implement the CTG. The guidance document indicates that the applicability threshold for the Manufacture of Synthesized Pharmaceutical Products CTG is 15 lb/day and that the CTG does not apply to fermentation processes.[7] YSAQMD plans to adopt a negative declaration for this CTG in January 2018 and, as discussed below, has requested parallel processing of the negative declaration.

3. On May 14, 2008, YSAQMD amended the solvent cleaning provisions in several rules to address RACT requirements. These rules need to be submitted to, and approved by, the EPA.

Complete—The VOC limits for solvent cleaning operations were consolidated into Rule 2.31 Solvent Cleaning and Degreasing, and made more stringent. Rule 2.31 was approved into the SIP on April 28, 2015 (80 FR 23449). In general, we propose to conclude that the existing SIP-approved rules from which the solvent cleaning limits were consolidated, in concert with SIP-approved Rule 2.31, implement RACT for the 1997 8-hour ozone standard.

4. YSAQMD should submit a negative declaration for the Wood Furniture CTG or submit Rule 2.39 Wood Products Coatings Operations for SIP approval.

Parallel processing negative declaration—YSAQMD plans to adopt a negative declaration for this CTG in January 2018 and, as discussed below, has requested parallel processing of the negative declaration.

The EPA concludes that YSAQMD has effectively taken actions to address each of the four deficiencies identified in our August 18, 2008 proposal.

Where there are no existing sources covered by a particular CTG document, states may, in lieu of adopting RACT requirements for those sources, adopt negative declarations certifying that there are no such sources in the relevant ozone nonattainment area. YSAQMD plans to adopt, at its January 10, 2018 Board hearing, negative declarations for the following CTGs:

EPA–450/2–78–029 Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products;

EPA–450/3–84–015 Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry;

EPA–450/4–91–031 Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry;

EPA–453/R–96–007 Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations.

The EPA has searched the CARB emissions inventory database and verified that there do not appear to be facilities in the YSAQMD that might be subject to these CTGs. We believe that these negative declarations are consistent with the relevant policy and guidance regarding RACT.

Our analysis of the remainder of YSAQMD's 2006 RACT SIP for the 1997 8-hour ozone NAAQS remains unchanged, and we propose to find that the District's RACT SIP submission is consistent with CAA requirements and relevant guidance regarding RACT, and SIP revisions.

Our August 18, 2008 proposed action also listed 13 CTG categories for which the YSAQMD states it has no sources in the District subject to the CTGs and no District rules covering those categories. These categories are repeated in Table 1 below. Table 2 lists the additional negative declarations that YSAQMD is adopting and for which it has requested parallel processing.

TABLE 1—NEGATIVE DECLARATIONS

CTG source category	CTG reference document
Aerospace	EPA–453/R–97–004—Aerospace Manufacturing and Rework Operations.
Ships	61 FR 44050 Shipbuilding and Ship Repair.
Metal Coil Container and Closure	EPA–450/2–77–008—Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks.
Magnetic Wire	EPA–450/2–77–033—Surface Coating of Insulation of Magnet Wire.
Natural Gas/Gasoline Processing Plants, Equipment Leaks.	EPA–450/2–83–007—Equipment Leaks from Natural Gas/Gasoline Processing Plants.
Refineries	EPA–450/2–77–025—Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.
	EPA–450/2–78–036—VOC Leaks from Petroleum Refinery Equipment.
Paper and Fabric	EPA–450/2–77–008—Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks.
Dry Cleaning	EPA–450/3–82–009—Large Petroleum Dry Cleaners.
Rubber Tires	EPA–450/2–78–030—Manufacture of Pneumatic Rubber Tires.
Large Appliances, Surface Coating	EPA–450/2–77–034—Surface Coating of Large Appliances.
Wood Coating	EPA–450/2–78–032—Factory Surface of Flat Wood Paneling.

[7] EPA–450/2–79–004, September 1979, Guidance to State and Local Agencies in Preparing Regulations to Control Volatile Organic Compounds from Ten Stationary Source Categories, page 61. Document available at *https://www.epa.gov/nscep.*

TABLE 1—NEGATIVE DECLARATIONS—Continued

CTG source category	CTG reference document
Synthetic Organic Chemical	EPA–450/3–83–006—Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.[8]
Polyester Resin	EPA–450/3–83–006—Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
	EPA–450/3–83–008—Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.

TABLE 2—NEGATIVE DECLARATIONS—PARALLEL PROCESSING

CTG source category	CTG reference document
Pharmaceutical Products	EPA–450/2–78–029 Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.
Synthetic Organic Chemical Manufacturing	EPA–450/3–84–015 Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
	EPA–450/4–91–031 Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.
Wood Furniture Coating	EPA–453/R–96–007 Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations.

Our 2008 and 2017 RACT SIP TSDs and our August 18, 2008 proposal have more information on our evaluation of the submitted RACT SIP and negative declarations.

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, and based on the rationale discussed above, the EPA proposes to approve YSAQMD's 2006 RACT SIP and four negative declarations because they fulfill the RACT SIP requirements under CAA sections 182(b) and (f) and 40 CFR 51.912 for the 1997 8-hour ozone NAAQS. As noted above, our proposed action also relies upon our evaluation of the public draft version of the four negative declarations planned for adoption by the YSAQMD in January 2018 and we will not take final action until these negative declarations are adopted and submitted to us as a revision to the California SIP. If the negative declarations that we have evaluated were to be revised significantly prior to adoption and submittal, we would need to reconsider our proposed action accordingly. We are simultaneously withdrawing our previous proposal (73 FR 48166, August 18, 2008) to disapprove the YSAQMD 2006 RACT SIP because the YSAQMD has corrected the identified RACT deficiencies for the 1997 8-hour ozone standard and are now proposing full approval as meeting the relevant CAA requirements.[9]

We will accept comments from the public on this proposal until February 7, 2018. If we take final action to approve the submitted documents, our final action will incorporate them into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible

[8] YSAQMD listed the Polymer and Resin Manufacturing Equipment CTG under the Synthetic Organic Chemical category and the Polyester Resin category. Accordingly, the 2006 RACT SIP submittal lacked the appropriate negative declarations for the SOCMI category. YSAQMD plans to adopt the correct negative declarations for the SOCMI category in January 2018 (see Table 2—Negative Declarations—Parallel Processing).

[9] Although we are withdrawing our August 18, 2008 proposed action, our TSD associated with that proposed action still contains pertinent information that summarizes our evaluation of YSAQMD's 2006 RACT SIP. On September 17, 2008, the YSAQMD submitted a comment letter outlining actions it took or planned to take to remedy the deficiencies identified in our August 18, 2008 proposed action. On March 16, 2009, YSAQMD transmitted a revised Final RACT SIP (draft) to the EPA. These documents are available in the docket for EPA–R09–OAR–2008–0612 under ''comments''. See *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=EPA-R09-OAR-2008-0612.*

methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 26, 2017.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–00025 Filed 1–5–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R08–OAR–2017–0552; FRL–_9971–27—Region 8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado; Control of Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a Clean Air Act (CAA) section 111(d)/129 plan (the ''plan'') submitted by the Colorado Department of Public Health and Environment (CDPHE) on July 14, 2017. The plan would allow for the implementation of emissions guidelines for existing commercial and industrial solid waste incineration (CISWI) units within the jurisdiction of the State of Colorado. The plan creates new enforceable emissions limits and operating procedures for existing CISWI units within the State of Colorado in accordance with the requirements established by the revised CISWI new source performance standards (NSPS) and emission guidelines (EG), promulgated by the EPA on March 21, 2011, with subsequent final amendments to the rule promulgated on February 7, 2013. This proposed plan approval rulemaking is being taken in accordance with the requirements of sections 111(d) and 129 of the CAA and the relevant parts and subparts of the Code of Federal Regulations (CFR).

DATES: Written comments must be received on or before February 7, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2017–0552 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gregory Lohrke, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6396, *lohrke.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background Information

Sections 111 and 129 of the CAA outline the EPA's statutory authority for regulating new and existing solid waste incineration units. Section 111(b) directs the EPA Administrator to publish and periodically revise a list of source categories which significantly cause or contribute to air pollution. This subsection also directs the Administrator to establish federal standards of performance for new sources within these categories. Section 111(d) grants the EPA statutory authority to require states to submit to the agency implementation plans for establishing performance standards applicable to existing sources belonging to those categories established in section 111(b). Section 129 specifically addresses solid waste combustion and requires that the EPA regulate new and existing waste incineration units pursuant to section 111 of the Act, including the requirement that a state in which existing designated facilities operate submit for approval a state plan for each category of regulated waste incineration units. Section 129(b)(3) requires the EPA to promulgate a federal plan for existing waste incineration units of any designated category located in any state which has not submitted an approvable 111(d)/129 state plan for said category of waste incineration unit. Such federal plans remain in effect until the state in question submits a new or revised state plan and subsequently receives approval and promulgation of the plan under 40 CFR part 62.

State plan submittals under CAA sections 111(d) and 129 must be consistent with the relevant new or revised EG. Section 129(a)(1)(D) of the Act requires the EPA to develop and periodically revise operating standards for new and existing CISWI units. The NSPS and EG for CISWI units were promulgated on December 1, 2000, at 40 CFR part 60, subparts CCCC and DDDD, respectively. Revisions to the CISWI NSPS and EG were subsequently promulgated by the EPA on March 21, 2011 (76 FR 15704), with final actions on reconsideration of the rule published on February 7, 2013 (78 FR 9112), and June 23, 2016 (81 FR 40956). State plan requirements specific to CISWI units, along with a model rule to ease adoption of the EG, are found in subpart DDDD, while more general state plan requirements are found in 40 CFR part 60, subpart B, and part 62, subpart A. The guidelines found in subpart DDDD require that states impose emission limits on designated facilities for those pollutants regulated under section 129, including: Dioxins/furans, carbon monoxide, metals (cadmium, lead and mercury), hydrogen chloride, sulfur dioxide, oxides of nitrogen, opacity and particulate matter. The EG also requires state plans include essential elements pursuant to section 129 requirements, including: Monitoring, operator training and facility permitting requirements.

On July 14, 2017, the CDPHE submitted to the EPA a new section 111(d)/129 state plan for existing CISWI units in the State of Colorado. The current state plan is a negative declaration letter certifying the absence of any known designated facilities regulated under the CISWI rule. The negative declaration was approved and promulgated by the EPA on September 17, 2003 (68 FR 54373), at 40 CFR part 62, subpart G. Since the revision of the CISWI rule, the State of Colorado has identified at least one operational designated facility which would be regulated under the revised rule, and has submitted a new state plan, summarized in the following section, to comply with CAA section 111/129 requirements.

III. Summary of Colorado's Section 111(d)/129 Plan for Existing CISWI Units

The EPA has completed a review of the new Colorado section 111(d)/129 plan submittal in the context of the requirements of 40 CFR part 60, subparts B and DDDD, and part 62, subpart A. The EPA has determined that the plan submittal meets the requirements found in the above-cited subparts. Accordingly, the EPA proposes to approve the submitted state plan. The EPA's proposed approval action is limited to the new CISWI state plan and the subpart DDDD ''Model Rule'' addressing CISWI units as they are incorporated by the State of Colorado in the Code of Colorado Regulations (CCR) at 5 CCR 1001–8 Regulation No. 6, part A, subpart DDDD. A detailed summary of the submittal's compliance with the requirements found in the CFR is available in the technical support document (TSD) associated with this rulemaking action. The TSD will be available in the docket for this rulemaking action and may be found at the *www.regulations.gov* website.

IV. Proposed Action

The EPA is proposing approval of the Colorado 111(d)/129 state plan for existing CISWI units because the plan requirements are at least as stringent as the requirements for existing CISWI units found in 40 CFR part 60, subpart DDDD. The state plan was submitted pursuant to 40 CFR part 60, subparts DDDD and B, and part 62, subpart A. Accordingly, the EPA proposes to amend 40 CFR part 62, subpart G to reflect the acceptability of the state plan submittal. This proposed approval is limited to the provisions of 40 CFR parts 60 and 62 for existing CISWI units, as found in the emission guidelines of Part 60, subpart DDDD. The EPA Administrator will retain the authorities listed under §§ 60.2542 and 60.2030(c).

V. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a section 111(d)/129 plan submission that complies with the provisions of the Act and applicable federal regulations at 40 CFR 62.04. Thus, in reviewing section 111(d)/129 plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

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

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Commercial and industrial solid waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 2, 2018.

Douglas H. Benevento,

Regional Administrator, Region 8.

[FR Doc. 2018–00115 Filed 1–5–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 17–59; FCC 17–151]

Advanced Methods To Target and Eliminate Unlawful Robocalls

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission invites comment on proposed changes to its rules. The Commission proposes rules regarding mechanisms to ensure that erroneously blocked calls can be unblocked as quickly as possible and without undue harm to callers and consumers. It also seeks comment on ways to measure the effectiveness of the Commission's robocalling efforts, as well as those of industry.

DATES: Comments are due on January 23, 2018. Reply Comments are due on February 22, 2018.

ADDRESSES: You may submit comments identified by CG Docket No. 17–59 and/or FCC Number 17–151, by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's website: *http://apps.fcc.gov/ecfs/.* Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 17–59.

• *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jerusha Burnett, Consumer Policy Division, Consumer and Governmental Affairs Bureau (CGB), at (202) 418-0526, email: *Jerusha.Burnett@fcc.gov,* or Karen A Schroeder, Consumer Policy Division, Consumer and Governmental Affairs Bureau (CGB), at (202) 418–0654, email: *Karen.Schroeder@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), document FCC 17–151, adopted on November 16, 2017, and released on November 17, 2017. The full text of document FCC 17–151 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. A copy of document FCC 17–151 and any subsequently filed documents in this matter may also be found by searching ECFS at: *http://apps.fcc.gov/ecfs/* (insert CG Docket No. 17–59 into the Proceeding block). The *Report and Order* that was adopted concurrently with the *FNPRM* is published elsewhere in the **Federal Register**. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using ECFS. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW, Washington, DC 20554.

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to: *fcc504@fcc.gov* or call CGB at: (202) 418–0530 (voice), or (202) 418–0432 (TTY). The *FNPRM* can also be downloaded in Word or Portable Document Format (PDF) at: *https://www.fcc.gov/document/fcc-adopts-rules-help-block-illegal-robocalls-0.*

Initial Paperwork Reduction Act of 1995 Analysis

The *FNPRM* seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198, 116 Stat. 729; 44 U.S.C. 3506(c)(4).

Synopsis

1. The Commission takes another important step in combatting illegal robocalls by enabling voice service providers to block certain calls before they reach consumers' phones. In the *Report and Order* portion of the document, the Commission adopts rules allowing voice service providers to block calls from phone numbers on a Do-Not-Originate (DNO) list and those that purport to be from invalid, unallocated, or unused numbers. Voice service providers have been active in identifying these calls and there is broad support for these rules. In the *FNPRM* portion of the document, the Commission seeks comment on two discrete issues related to the rules.

2. The Commission seeks comment on two discrete issues related to the rules adopted in the *Report and Order* portion of document FCC 17–151. *First,* the Commission seeks comment on

potential mechanisms to ensure that erroneously blocked calls can be unblocked as quickly as possible and without undue harm to callers and consumers. The Commission encourages voice service providers who block calls under certain stated criteria to identify and quickly rectify any erroneous blocking. The Commission now seeks comment on whether it should require providers who block calls to provide a formal challenge mechanism. Should the Commission require blocking providers to establish a challenge mechanism by which callers can inform them of erroneous blocking and such blocking can quickly be fixed? What is the quickest way for callers to be informed of blocking, *e.g.,* should providers send an intercept message to callers to notify them of the block with contact information by which a caller may report and rectify the situation? Should challenge mechanisms be different based on the scale of the blocking provider? What challenge mechanisms are blocking providers considering adopting, even absent a requirement? Is such a requirement necessary? Alternatively, does the Commission's informal complaint process provide a mechanism to surface erroneous blocking to providers and correct it? Are there ways the Commission could modify its informal complaint process to address the time-sensitive nature of erroneous call blocking? Are there other Commission processes that would provide an appropriate mechanism for rectifying erroneous blocking?

3. Once a caller is aware of erroneous blocking, how can the Commission best ensure their calls are unblocked? Should providers cease blocking calls as soon as is practicable upon a credible claim by the caller that its calls are being blocked in error? Should the Commission establish specific timeframes and requirements for making a credible claim of erroneous blocking? How can the Commission mitigate the risk that makers of illegal robocalls will exploit such a process? Commenters should address the balance between quickly identifying and rectifying erroneous blocking against imposing unduly onerous burdens on providers that might disincent helpful call blocking. In this light, the Commission seeks comment on call blocking models voice providers or third parties may have developed to address erroneous call blocking.

4. *Second,* the Commission seeks comment on ways it can measure the effectiveness of the robocalling efforts as well as those of industry. If the Commission were to adopt a reporting obligation on all voice service providers, what information should be collected? Should providers be required to report the quantity of false positives? Should this be a quarterly requirement or an annual requirement? In what ways could the information collected help the Commission evaluate the effectiveness of its efforts as well as those of industry and/or support additional measures to combat illegal robocalls? What consumer benefits would come from requiring all voice service providers to publicly report the number of illegal robocalls blocked each day/month/year? What are the costs of requiring voice service providers to report this information? Should the Commission consider different requirements for smaller providers? Alternatively, should the Commission use data from the FCC's Consumer Complaint Data Center as a benchmark for determining the effectiveness of FCC and industry efforts? Are there other Commission or third-party data sources that the Commission could use to assess the effectiveness of its efforts as well as industry's at targeting illegal robocalls?

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* indicated above in the **DATES** portion of this document. The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

6. The *FNPRM* builds on the *Report and Order* portion of document FCC 17–151 by inquiring about two related matters: How to effectively implement a challenge mechanism to allow erroneously blocked calls to be unblocked as quickly as possible and how to measure the effectiveness of the rules adopted in the *Report and Order.*

7. First, the *FNPRM* seeks comment on how to best ensure that a challenge mechanism unblocks erroneously blocked calls as quickly as possible without undue harm to callers and consumers. It seeks comment about what mechanism to use to allow consumers to complain about erroneously blocked numbers. It also asks if the Commission should require blocking carriers to establish a formal challenge mechanism and how callers will be informed that their calls have been blocked. In addition, the *FNPRM* seeks comment on how to best ensure calls are unblocked once providers are aware they are blocking them in error. It asks whether the Commission should establish timeframes and requirements for making a credible claim of erroneous blocking and how to mitigate the risk that makers of illegal calls will exploit the process. In addition, the *FNPRM* seeks comment on models that have already been developed to accomplish these tasks.

8. Second, the *FNPRM* seeks comment on ways to measure the effectiveness of the call blocking rules adopted in the concurrent *Report and Order.* The *FNPRM* asks about requiring reporting by providers, including what information should be collected, the frequency of information collection, how the information should be used, and how to use various data sources as benchmarks for the effectiveness of the rules. In addition, the *FNPRM* seeks comment on the consumer benefits such information would provide.

Legal Basis

9. The proposed and anticipated rules are authorized under sections 201, 202, 222, 251(e) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 202, 222, 251(e), 403.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

10. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Wireline Carriers

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission

facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of local exchange service are small businesses.

13. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

14. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, shared-tenant service providers, and other local service providers are small entities.

15. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

16. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using

facilities and infrastructure that they operate are included in this industry.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that the majority of interexchange carriers are small entities.

17. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that all but nine incumbent cable operators are small entities under this size standard. Note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

18. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to other toll carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of other toll carriers can be considered small.

Wireless Carriers

19. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

20. *Satellite Telecommunications Providers.* The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' This category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of satellite telecommunications firms are small entities.

21. *All Other Telecommunications.* All other telecommunications comprises, *inter alia,* ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for the category of All Other Telecommunications. Under that size standard, such a business is small if it has $32.5 million in annual receipts. For this category, Census Bureau data for 2012 show that there were a total of 1,442 firms that operated for the entire year. Of this total, 1,400 had annual receipts below $25 million per year. Consequently, the Commission estimates that the majority of all other telecommunications firms are small entities.

Resellers

22. *Toll Resellers.* The Commission has not developed a definition for toll resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such

a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

23. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these local resellers can be considered small entities.

24. *Prepaid Calling Card Providers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

25. As indicated above, the *FNPRM* builds on the *Report and Order* portion of document FCC 17–151 by inquiring about how to effectively implement a challenge mechanism to allow erroneously blocked calls to be unblocked as quickly as possible and seeking comment on how to measure the effectiveness of the rules adopted in the *Report and Order.* The Commission seeks to minimize the burden associated with reporting, recordkeeping, and other compliance requirements for the proposed rules.

26. Under the proposed rules, providers may need to establish procedures to respond to and evaluate complaints of erroneous call blocking, and quickly cease blocking that it determined to have been initiated in error. In addition, providers may need to retain records of calls blocked and report that information on a periodic basis.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

28. The challenge mechanism and reporting on which the Commission seeks comment could apply to all providers that block calls under the permissive rules in the *Report and Order.* In the *Report and Order,* the Commission encourages all carriers, including small businesses, to block illegal calls, and the Commission therefore seeks comment from small businesses on how to minimize costs associated with the challenge mechanism and the reporting. The *FNPRM* poses specific requests for comment from small businesses regarding how the proposed rules affect them and what could be done to minimize any disproportionate impact on small businesses.

29. The Commission will consider ways to reduce the impact on small businesses, such as establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities based on the record in response to the *FNPRM.* The Commission has requested feedback from small businesses in the *FNPRM* and seeks comment on ways to make a challenge mechanism and reporting less costly. The Commission seeks comment on how to minimize the economic impact of these potential requirements.

30. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *FNPRM,* in reaching its final conclusions and taking action in this proceeding.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

31. None.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2018–00100 Filed 1–5–18; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17–289; FCC 17–156]

Rules and Policies To Promote New Entry and Ownership Diversity in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document solicits comment on how to design and implement an incubator program to support the entry of new and diverse voices in the broadcast industry. It seeks comment on the structure, review, and oversight of such a program in order to help create new sources of financial, technical, operational, and managerial support for eligible broadcasters, thereby creating ownership opportunities for new entrants and small businesses and promoting competition and new voices in the broadcast industry.

DATES: Comments are due on or before March 9, 2018 and reply comments are due on or before April 9, 2018. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before March 9, 2018.

ADDRESSES: You may submit comments, identified by MB Docket No. 17–289, by any of the following methods:

- *Federal Communications Commission's website: http://apps.fcc.gov/ecfs//.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 888–835–5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benjamin Arden, Industry Analysis Division, Media Bureau, FCC, (202) 418–2330. For additional information concerning the PRA proposed information collection requirements contained in the Notice of Proposed Rulemaking, contact Cathy Williams at (202) 418–2918, or via the internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), in MB Docket No. 17–289; FCC 17–156, was adopted on November 16, 2017, and released on November 20, 2017. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at *https://apps.fcc.gov/edocs_public/.* The complete document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The NPRM proposes a new or revised information collection requirement. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due March 9, 2018. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

I. Introduction

1. With the NPRM, the Commission seeks comment on how to design and implement an incubator program to support the entry of new and diverse voices in the broadcast industry. Specifically, the Commission seeks comment on the structure, review, and oversight of a comprehensive incubator program that will help create new sources of financial, technical, operational, and managerial support for eligible broadcasters. The Commission believes that such a program can create ownership opportunities for new entrants and small businesses, thus promoting competition and new voices in the broadcast industry.

II. Background

2. The Commission has long considered whether to adopt an incubator program to help provide new sources of capital and support to entities that may otherwise lack operational experience or access to financing. Generally, an incubator program would provide an ownership rule waiver or similar benefits to a company that establishes a program to help facilitate station ownership for a certain class of prospective or existing station owners. For example, in exchange for a defined benefit, such as waiver of a broadcast ownership rule, an established company could assist a new owner by providing financial, management, technical, training, and/or business planning assistance. Over the years, a number of parties have proposed or supported recommendations for some type of an incubator program, but the Commission has never developed a comprehensive incubator program. The Commission has adopted a limited program that provides a duopoly preference to parties that agree to incubate or finance an eligible entity, but this limited policy preference does not serve as an effective basis upon which to design a comprehensive incubator program.

3. The history of this issue dates back at least to the early 1990s, but the Commission's goal is to build on its most recent efforts. Notably, in 2010 the Commission's Advisory Committee on Diversity for Communications in the Digital Age recommended that the Commission commence a rulemaking to pursue an incubator program in order to help promote ownership diversity. The committee provided various recommendations on how to structure such a program. Subsequently, the Commission sought comment during its 2010/2014 quadrennial reviews of its media ownership rules on whether to adopt an incubator program and, if so, how to structure such a program. The Commission highlighted administrative concerns and structural issues that needed to be addressed before such a program could be adopted. The record built in response to the Commission's requests for comment contained continued support for the concept of an incubator program and some suggestions on how to structure certain aspects of such a program. Some commenters, however, expressed concern that an incubator program would create a loophole in the Commission's ownership limits that could potentially harm small and independent station owners. The Commission found that the record failed to address those specific concerns and declined to adopt an incubator program. A couple of commenters urged the Commission to continue its consideration of an incubator program and suggested that additional public comment could help resolve the remaining administrative and structural issues. In an Order on Reconsideration adopted in conjunction with this NPRM,

the Commission decided to adopt an incubator program and committed to initiating this proceeding to resolve issues regarding the design and implementation of that program.

4. In addition, on July 5, 2017, the Commission commissioned the Advisory Committee on Diversity and Digital Empowerment, which held its first meeting on September 25, 2017. The Commission anticipates that the committee's work will help inform its efforts to create an incubator program.

III. Discussion

5. As stated above, the Commission decided to adopt an incubator program to help address the lack of access to capital and technical expertise faced by potential new entrants and small businesses. But while there is general support for an incubator program to help address these issues, there is little consensus regarding the structure or details of such a program. The Commission anticipates that this NPRM, devoted exclusively to an incubator program, can help generate solutions to these technical and administrative issues. Accordingly, as detailed below, the Commission seeks comment on eligibility criteria for the incubated entity; appropriate incubating activities; benefits to the incubating entity; how such a program would be reviewed, monitored, and enforced; and the attendant costs and benefits. The Commission anticipates that the record will reveal innovative strategies for partnerships between established broadcasters and new entrants.

A. Defining Entities Eligible for Participation

6. The Commission seeks comment on how to determine eligibility for participation in the incubator program. Options include:

• *New Entrants.* The Commission could create a standard similar to the new entrant bidding credit eligibility definition applicable in the broadcast auction context. Under the auction rules, an auction participant is eligible for bidding credits if it has attributable interests in few or no other media of mass communication. A 35 percent bidding credit is awarded to a qualifying new entrant that has no attributable interest in any other media of mass communication, while a 25 percent bidding credit is awarded to a qualifying new entrant that holds an attributable interest in no more than three mass media facilities.

• *Revenue-Based Eligible Entity.* The Commission could use its previously adopted revenue-based eligible entity standard to identify those qualified to take advantage of certain preferential regulatory policies. An eligible entity under this definition is any commercial or non-commercial entity that qualifies as a small business consistent with Small Business Administration (SBA) revenue grouping according to industry. Additionally, the Commission requires a small business eligible entity to hold: (1) 30 percent or more of the stock/partnership shares and more than 50 percent voting power of the corporation or partnership that will hold the broadcast license; (2) 15 percent or more of the stock/partnership shares and more than 50 percent voting power of the corporation or partnership that will hold the broadcast license, providing that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interest; or (3) more than 50 percent of the voting power of the corporation if the corporation that holds the licenses is a publicly traded corporation.

• *Socially and Economically Disadvantaged Businesses (SDB).* The SDB standard is based on the definition employed by the SBA. Pursuant to the SBA's program, persons of certain racial or ethnic backgrounds are presumed to be disadvantaged; all other individuals may qualify for the program if they can show by a preponderance of the evidence that they are disadvantaged. To qualify for this program, a small business must be at least 51 percent owned and controlled by a socially and economically disadvantaged individual or individuals. The SDB standard is explicitly race-conscious and, therefore, subject to heightened constitutional review, a standard that the Commission previously found was insufficiently met by the record at the time.

• *Overcoming Disadvantages Preference (ODP).* The ODP standard would employ various criteria to demonstrate that an individual or entity has overcome significant disadvantage. The Commission previously declined to adopt an ODP standard, citing concerns with the approach.

7. The Commission seeks comment on these various standards, including any modifications that would be appropriate in the incubator context. In particular, are there any changes to these standards that would help address previous concerns expressed by the Commission? Which of these standards most closely aligns with the Commission's goal to help facilitate ownership opportunities for entities that lack access to capital and operational experience and thereby promote competition and viewpoint diversity in local markets? In addition, the Commission seeks comment on any other standards that would effectively promote its objectives. Any commenters proposing or supporting a race- and/or gender-specific standard should also provide analysis regarding how such a standard could withstand a constitutional challenge. The Commission also seeks comment on the relative advantages of the various standards. Certain standards are more difficult to define and administer and may raise constitutional concerns. What are the offsetting benefits of these approaches relative to standards that are easier to apply and/or do not raise constitutional concerns?

B. Defining Qualifying Incubation Activities

8. The Commission also seeks comment on the activities that would qualify as incubation. Such activities would need to provide the incubated entity with support that it otherwise lacks and that is essential to its operation and ability to serve its community. As traditionally conceived, a comprehensive program could include management or technical assistance, loan guarantees, direct financial assistance through loans or equity investment, and training and business planning assistance. Should the Commission consider other activities, such as donating stations to certain organizations or arrangements whereby the new entrant gains operational experience without first acquiring a station, such as programming a station and selling advertising time under a local marketing agreement?

9. What combination of activities (financial and operational) should be required to qualify as an incubation relationship? Should there be any conditions on the financial aspects of the relationship? For example, should there be any limitations on the incubating entity holding an option to acquire the incubated station? Should the Commission adopt time limitations on technical assistance? For example, should the Commission impose a minimum amount of time to ensure that the incubated station acquires sufficient technical expertise to operate the station independently of the established broadcaster? Should the Commission impose a maximum amount of time to ensure that the incubated station actually does become independent? What role should sharing agreements (*e.g.,* local marketing agreements, joint sales agreements, and shared service agreements) play, if any, in the incubation relationship? The Commission seeks comment on these issues.

10. How can the Commission ensure that use of the incubation program is

necessary to promote new entry? For example, should the proposed incubated station certify that it lacks the access to capital and technical expertise necessary to acquire and operate the station? Should participation in an incubator program be limited to new station acquisitions? Alternatively, should participation extend to existing station owners that are struggling and may need financing or other support to continue operation? Are there any justifications for limiting participation differently based on the eligibility standard selected?

11. While the Commission's rules already prohibit unauthorized transfers of control, including *de facto* transfers of control, should it adopt any additional safeguards as part of an incubation program to ensure that the incubated station licensee retains control of its station?

C. Benefit to Incubating Station

12. In order to encourage an established broadcaster to engage in incubating activities, the incubation program must provide a meaningful benefit to the incubating entity. In general, the potential benefit suggested has been a waiver of the Commission's local broadcast ownership rules. How should the Commission structure the waiver program? For example, should the waiver be limited to the market in which the incubating activity is occurring? Alternatively, should waiver be permissible in any similarly sized market? How would the Commission determine which markets are similar in size? Should the Commission review these waivers in the future to determine whether they continue to be justified? On what grounds would the Commission evaluate the waivers? Should the waiver be tied to the success of the incubation relationship? Should the waiver continue even if the incubator program ends and, if so, for how long? What should be considered a successful relationship? Should the waiver be transferrable if the incubating entity sells a cluster of stations that does not comply with the ownership limits at the time?

13. Instead of a waiver to acquire a different station in the market (or a similarly sized market), should the Commission allow the incubating entity to obtain an otherwise impermissible non-controlling, attributable interest in the incubated station? This would allow the incubating entity to obtain financial benefits that accrue from successful operation of the incubated station and would limit the impact on competition, both by ensuring that the incubated entity retains control of the station and by tying the ownership waiver to the period of time the incubated entity owns the station. Would such an approach dilute the contributions of the incubated station as an independent market participant?

14. Should the Commission limit any incubator program to radio, as the proposal was initially conceived, or should the program apply to both radio and television? Should the Commission adopt a phased approach, whereby it institutes the program on a trial basis in radio and then evaluate its success and operation before expanding to television, and if so, how long should such a trial period last? What steps should the Commission take to evaluate the trial period and whether to expand the program?

D. Review of Incubation Proposals

15. The Commission seeks comment on the review process for incubation proposals. It expects that most incubation proposals will accompany an assignment or transfer of control application. These applications would be subject to petitions to deny and informal comments under the Commission's rules. Does this provide the public with sufficient opportunity to comment on the proposal? What public concerns should the Commission consider in its evaluation? Are there other situations beyond an assignment or transfer of control application in which an incubator proposal could be applied, and if so, how should the review process work in such circumstances?

16. If the program is extended to incubation opportunities for existing station owners that are facing financial and/or technical difficulties, how should the parties submit the proposal to the Commission for review and approval? For example, should the Commission require electronic filing of such requests in the Commission's Electronic Comment Filing System? Should these filings then be subject to the same public comment requirements as those filed as part of an assignment or transfer of control application?

17. The Commission notes that so long as the arrangement is permissible under existing Commission rules, parties do not need prior approval to enter into agreements regarding finances or station operations. However, for the arrangement to count as incubation, such that the incubating entity is entitled to the benefits of the program (*e.g.,* an ownership waiver), the Commission would need to find that the relationship satisfies the incubation criteria. In such circumstances, should Commission approval be required prior to the initiation of the incubation relationship or should the parties be permitted to request recognition of a previous or ongoing incubation relationship, perhaps as part of an application from the incubating entity requesting an ownership waiver for the acquisition of another station? Should there be a time limit on such subsequent requests for approval?

E. Compliance Assessment

18. As evidenced by the foregoing, an incubation relationship may involve complex agreements between the parties regarding financing, programming, and operations. How should the Commission monitor compliance with the terms of incubation? Should the Commission require periodic reports to be filed by one or both parties or placed in their online public files? If so, how frequently should the reports be filed? Should these reports be available to the public? What information should the reports contain? Should the Commission instead conduct its own periodic review of the incubation activities and compliance with the relevant agreements? What other compliance measures should the Commission consider?

19. If compliance lapses, for any reason, what are the consequences? Should the incubating party be required to divest itself of the benefits it received for engaging in incubation activities? For example, if the incubating party was granted a waiver of a local broadcast ownership rule, should it be forced to come into compliance with the relevant ownership limit if it does not fulfill the terms of the incubation program? Should the Commission allow the incubating party to seek to be relieved of its obligations and retain the benefits (*e.g.,* ownership waiver) if the incubated station fails to comply with the terms of the agreement? Are there other appropriate enforcement responses, such as fines? Should the Commission establish a time limit on the benefits granted under the incubation program based on the premise that the purpose of the program is to enable incubated entities to operate independently after some period of assistance?

F. Costs and Benefits

20. The Commission seeks comment on the costs and benefits associated with the proposals in this NPRM. In particular, the Commission encourages broadcasters and other industry participants to submit any relevant data regarding the potential costs associated with the various application, recordkeeping, and compliance requirements proposed herein. Are there

ways to structure the program to reduce costs, particularly for small businesses? How does the Commission define and quantify the expected benefits of an incubator program?

IV. Procedural Matters

A. Ex Parte Rules

21. The proceeding for the NPRM shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Section 1.1206(b). In proceedings governed by Section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing Requirements

22. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

▪ Commenting parties may file comments in response to this NPRM in MB Docket No. 17–289; interested parties are not required to file duplicate copies in the additional dockets associated with the Order on Reconsideration adopted at the same time as the NPRM.

▪ *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

V. Initial Regulatory Flexibility Act Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

24. In the NPRM, the Commission seeks comment on the structure and implementation of an incubator program. Broadly speaking, an incubator program would provide an ownership rule waiver or similar benefits to a company that establishes a program to help facilitate station ownership for a certain class of new owners. Under such a program, an established company could assist a new owner by providing financial, management, technical, training, and/or business planning assistance. The primary purpose of such a program would be to help provide new sources of capital and support to entities that may otherwise lack operational experience or access to financing and thereby promote diversity. Over the years, a number of parties have proposed or supported recommendations for some type of an incubator program; however, substantive and administrative issues need to be resolved before an incubator program can be adopted. This NPRM seeks comment on these issues.

B. Legal Basis

25. The proposed action is authorized pursuant to sections 1, 2(a), 4(i), 257, 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303, 307, 309, 310, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

26. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

established by the SBA. A description of such small entities is provided below, as well as an estimate of the number of such small entities, where feasible.

27. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census data reports that 751 such firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

28. The Commission has estimated the number of licensed commercial television stations to be 1,382. Of this total, 1,262 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on May 9, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 393. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

29. It is important to note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television broadcast station from the definition of a small business on this basis and are therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and the Commission's estimates of small businesses to which they apply may be over-inclusive to this extent.

30. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

31. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database on May 9, 2017, about 11,392 (or about 99.9 percent) of 11,401 of commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial radio stations to be 11,401. It is important to note that the Commission has also estimated the number of licensed noncommercial radio stations to be 4,111. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

32. It is important to note, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. It is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis. The Commission's estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

33. Certain options, if adopted, may result in new reporting, recordkeeping, and compliance obligations for those broadcasters that participate in an incubator program. For example, parties could be required to submit the incubation proposal to the Commission for approval, file periodic compliance reports with the Commission or place the reports in their online public files, or submit requests for relief if the terms of the incubator proposal are not adhered to. In order to evaluate any new or modified reporting, recordkeeping or other compliance requirements that may result from the actions proposed in this NPRM, the Commission has sought input from the parties on various matters. The NPRM seeks comment on how to structure an incubation program, including a requirement that the parties file the incubation proposal with the Commission for the purpose of seeking the Commission's approval of the arrangement. The Commission seeks comment on the method for filing the agreement in circumstances in which the parties seek Commission approval of the incubation relationship, such as whether it should be filed as part of an application for assignment or transfer of control of a broadcast license or, in the absence of such an application, via the Commission's Electronic Comment Filing System. The NPRM also seeks comment on how to structure reporting, recordkeeping, and compliance requirements, which could also result in increased requirements for parties to an incubation arrangement. For example, the NPRM seeks comment on whether to

require periodic certifications that the parties remain in compliance with the incubation proposal approved by the Commission.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

35. To evaluate options and alternatives should there be a significant economic impact on small entities as a result of actions that have been proposed in this NPRM, the Commission has sought comment from the parties. The NPRM seeks comment on the costs and benefits associated with various proposals and alternatives such as how to structure the administration and oversight of an incubator program and specifically seeks comment on ways to reduce the burdens on small entities. Overall, however, the Commission believes that small entities will benefit from their participation in an incubator arrangement by getting access to capital and/or operational assistance that they may otherwise lack, which may minimize any economic impact that may be incurred by small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

36. None.

VI. Ordering Clauses

37. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303, 307, 309, 310, and 403, and section 202(h) of the Telecommunications Act of 1996, the Notice of Proposed Rulemaking *is adopted.*

38. *It is further ordered* that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the NPRM in MB Docket No. 17–289 on or before March 9, 2018 and reply comments on or before April 9, 2018.

39. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer. Office of the Secretary.

[FR Doc. 2017–28328 Filed 1–5–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 171023999–7999–01]

RIN 0648–BH35

Fisheries of the Northeastern United States; Black Sea Bass Fishery; 2018 February Recreational Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes recreational management measures for a February 2018 black sea bass fishery. The proposed action is intended to provide additional recreational black sea bass fishing opportunities while maintaining management measures to prevent overfishing. This action is also intended to inform the public of these proposed measures and to provide an opportunity for comment.

DATES: Comments must be received by 5 p.m. local time, on January 23, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0151, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0151,*

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

—OR—

Mail: Submit written comments to John Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on the Proposed Rule for 2018 Black Sea Bass February Recreational Fishery.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of this draft EA, including the Regulatory Flexibility Act Analysis (RFAA) and Regulatory Impact Review (RIR), are available online at *www.greateratlantic.fisheries.noaa.gov,* or on request from John Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission jointly manage the summer flounder, scup, and black sea bass fisheries under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The management unit specified in the FMP for black sea bass (*Centropristis striata*) is U.S. waters of the Atlantic Ocean from 35 E 13.3′ N lat. (the latitude of Cape Hatteras Lighthouse, Buxton, North Carolina) north to the U.S./Canada border. States manage black sea bass through the Commission's plan within 3 nautical miles (4.83 km) of their coasts. The applicable Federal regulations govern vessels and individual anglers fishing in Federal waters of the exclusive economic zone

(EEZ), as well as vessels possessing a Federal black sea bass charter/party vessel permit, regardless of where they fish. The recreational fishery is essentially managed with four parts: The recreational harvest limit; the open season; minimum fish size; and a per-angler possession limit. The recreational harvest limit is established based on the specifications formula in the FMP. The open season, minimum fish size, and bag limit are collectively referred to as the ''recreational management measures.''

Action Background

In 2017, the results of the 2016 benchmark assessment showed that the black sea bass stock is not overfished, overfishing is not occurring, and biomass is 2.3 times higher than the biomass target. These findings led both the Council and Commission to reconsider reopening a recreational Wave 1 (January and February) black sea bass fishery in 2018 as a way to increase access and recreational fishing opportunity while still constraining landings within the recreational harvest limit. The current Federal recreational black sea fishing seasons are May 15 through September 21 and October 22 through December 31, and the last time this fishery was open during Wave 1 was in 2013.

In October 2017, both the Council and Commission approved the addition of a February-only black sea bass recreational season for 2018, with the continued recreational measures of a 15-fish per-angler possession limit, and a 12.5-inch (31.75-cm) minimum size. The Council also agreed to work on the implementation of a winter recreational Letter of Authorization (LOA) program for 2019 and beyond. The LOA program would provide more robust monitoring and reporting for a limited winter recreational fishery; however, changes of this magnitude require a framework adjustment to the FMP and cannot be developed in time for 2018.

Proposed Action

This action proposes to revise the current 2018 Federal recreational management measures for black sea bass to include an additional 28-day fishing season during the month of February. The current recreational management measures of a 12.5-inch (31.75-cm) minimum fish size and 15-fish possession limit would also apply. To account for expected harvest during this February season, the Council and Commission calculated a catch estimate of 100,000 lb (45.36 mt). Because there are no Marine Recreational Information Program survey data for Wave 1 in the black sea bass fishery, this catch estimate is based on 2013 vessel trip report (VTR) data from federally permitted for-hire vessels that was expanded to account for potential effort from the private/rental and shore modes. We propose to reduce the 2018 black sea bass recreational harvest limit (3.66 million lb, 1,661 mt) by the estimated catch of 100,000 lb (45.36 mt), consistent with the Council and Commission recommendation. However, only states that participate in the proposed February fishery will be accountable for this estimated catch. Participating states would be required to adjust measures for the remainder of 2018, developed through the Commission process, to account for the estimated February catch.

This action is only intended to be in place for the 2018 fishing year. The intent of this proposed action is to allow for some recreational fishing access during Wave 1 in 2018 while the long-term framework adjustment is developed. The Council and Commission will develop and make recommendations on management measures for the remainder of the 2018 recreational fishery, including those to accommodate this additional winter season, throughout the spring of 2018.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA), to examine the impacts of this proposed rule on small business entities, if adopted. A description of the management measures, why they are being considered, and the legal basis for this action are contained at the beginning of this section and in the preamble to this proposed rule. A copy of the RFA analysis is available from NMFS (see **ADDRESSES**).

Description of the Reasons Why Action by the Agency Is Being Considered

This action proposes a revision to the 2018 Federal recreational management measures for black sea bass to include an additional 28-day fishing season during the month of February. The proposed measures would increase recreational fishing access and opportunity while still constraining landings within the recreational harvest limit.

Statement of the Objectives of, and Legal Basis for, This Proposed Rule

The legal basis and objectives for this action are contained in the preamble to this proposed rule, and are not repeated here.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. A business primarily engaged in for-hire fishing activity is classified as a small business if it has combined annual receipts not in excess of $7.5 million (NAICS 11411) for RFA compliance purposes only.

This proposed rule affects recreational fish harvesting entities engaged in the black sea bass fishery. Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those affected by the proposed action. Furthermore, multiple-permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of RFA analysis, the ownership entities, not the individual vessels, are considered to be the regulated entities.

Ownership entities (firms) are defined as those entities with common ownership personnel as listed on the permit application. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ownership entity that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ownership entity for the purpose of this analysis.

The current ownership data set used for this analysis is based on calendar year 2016 (the most recent complete year available) and contains average gross sales associated with those permits for calendar years 2014 through 2016. The ownership data for the for-hire fleet indicate that there were 406 for-hire permits that generated revenues from recreational fishing for various species during the 2014–2016 period. Of these permits there were 328 that were not affiliated with any other ownership group. The remaining 78 for-hire vessels were comprised of affiliated ownership groups with between 2 and 6 for-hire vessels for a total of 359 for-hire affiliate firms; all of which are categorized as small businesses. Based on the three-year average (2014–2016) combined gross receipts from all fishing activities, including commercial fishing, these affiliated entities earned 99% of all sales from their for-hire business. The aggregate three-year average earnings from all for-hire fishing activity for these small entities was $53.1 million. Three-year average receipts per entity ranged from under $10,000 for 99 small entities to over one million dollars for 11 small entities. Although it is not possible to derive what proportion of the overall revenues came from specific fishing activities, further analysis conducted by the Council and NMFS during the development of this action identified that in 2016 there were 291 for-hire entities that recreationally caught black sea bass catch. In 2013, the last year that a Wave 1 recreational black sea bass fishery was open, 331 for-hire firms caught black sea bass recreationally; however, only 39 of those were active during the Wave 1 period. While these are the best available estimates of potential participation in the February season proposed by this action, these numbers are not necessarily indicative of the number of entities that will actually participate. Through this IRFA we are soliciting feedback from participants to more effectively gauge potential impacts of this action.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Proposed Rule

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The proposed measures to open a February season are designed to increase fishing opportunity in the 2018 recreational black sea bass fishery while maintaining harvest within the recreational harvest limit and annual catch limit. Business entities that hold charter/party permits and are active participants in the fishery may benefit if they decide to participate in this new fishing season. This action would allow recreational access to black sea bass in Federal waters during the month of February, when there are fewer other species available to target. This adds to the revenue potential for charter/party entities in this ''off'' season. Even accounting for some level of reduced black sea bass catch in the later, peak summer and fall seasons to balance out harvest from this extra season, charter/party entities should be able to continue to generate revenue and book trips by supplementing business with other available target species during the peak fishing seasons. Therefore, the economic impacts of this action are expected to be minimally positive. Because the exact number of participants in this fishery are unknown at this time, it is not possible to quantify the degree of potential economic benefit that the Federal fishery may have. Similarly, because the full 2018 fishing year measures will not be developed until spring of 2018, we cannot determine how substantial the changes may be that are required for participating states. It is expected that entities could offset the effects of potential reductions during peak black sea bass seasons by targeting other species. The earlier we gain an understanding of the level of interest and potential participation in this February season, the better we can accurately analyze the potential impacts of this action on small entities.

There were two alternatives (status quo and opening during both January and February) to the proposed action that were also considered. The status quo alternative maintains the current recreational seasons for black sea bass (May 15 through September 21, and October 22 through December 31), with no additional seasons or changes to the projected measures. This alternative is not preferred, as it does not take advantage of the favorable stock assessment report; nor increase any access or opportunity in the recreational black sea bass fishery.

The Council also considered opening an additional recreational black sea bass season in 2018 for the entirety of Wave 1 (January and February). This alternative is similar to the preferred alternative, and would create more recreational fishing opportunity in winter 2018 with a longer additional season. However, given the lack of recreational data available during Wave 1, the time constraints involved with developing and implementing a specifications rule by January, and the potential disproportionate impacts to state recreational fisheries later in the year because higher estimated catch would likely occur in a longer winter fishery, the Council preferred a shorter 2018 winter fishery.

The Council recommended, and we are proposing, a February recreational fishery to satisfy the Magnuson-Stevens Act requirements to ensure fish stocks are not subject to overfishing, while allowing the greatest access to the fishery, and opportunity to achieve optimum yield.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 2, 2018.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. Section 648.146 is revised to read as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from February 1 through February 28, May 15 through September 21, and October 22 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[FR Doc. 2018–00065 Filed 1–5–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 5

Monday, January 8, 2018

DEPARTMENT OF COMMERCE

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: U.S. Census Bureau.

Title: American Community Survey Methods Panel Tests, 2018 Data Slide Test.

OMB Control Number: 0607–0936.

Form Number(s): ACS–1, ACS CAPI, ACS internet.

Type of Request: Non-substantive Change Request.

Number of Respondents: 288,000.

Average Hours Per Response: 40 minutes.

Burden Hours: No additional burden hours are requested under this non-substantive change request.

Needs and Uses:

The American Community Survey (ACS) collects detailed socioeconomic data from about 3.5 million housing units in the United States and 36,000 in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 195,000 residents living in Group Quarter (GQ) facilities. An ongoing data collection effort with an annual sample of this magnitude requires that the ACS continue research, testing, and evaluations aimed at reducing respondent burden, improving data quality, achieving survey cost efficiencies, and improving ACS questionnaire content and related data collection materials. The ACS Methods Panel is a research program designed to address and respond to issues and survey needs.

Residents of sampled housing units are invited to self-respond to the ACS through a series of up to five mailings. Some respondents call the Census Bureau with questions or concerns about the survey after receiving the mail invitation. One common reason for calling is to verify that the ACS is a real survey. Respondents are hesitant to provide information about their household online or on a paper questionnaire without knowing that the survey is legitimate. Additionally, respondents want to understand how the data are used. To address these concerns, in addition to potentially improving the self-response rate, the Census Bureau seeks to test the inclusion of a data slide (also known as a slide chart) with the current ACS mail materials. The primary goals of the data slide are to help legitimize the survey and to present statistics of interest. The data slide could also potentially serve as a reminder to complete the survey. Promoting survey legitimacy and respondent trust may ultimately reduce respondent burden and increase self-response. The data slide will contain information on selected statistics from the ACS for each state, the District of Columbia, and Puerto Rico.

Two experimental treatments are proposed. This test will involve the initial package (the first mailing) and the paper questionnaire package (the third mailing); some experimental cases will receive a data slide in the initial package and other experimental cases will receive it in the paper questionnaire package (if a response is not received prior to the third mailing).

This test will study the impact on self-response and cost of including the data slide in the mail materials. To field this test, the Census Bureau plans to use the ACS production sample (clearance number: 0607–0810, expires 06/30/2018). Thus, there is no increase in burden from this test since each treatment will result in the same burden estimate per interview (40 minutes). The ACS sample design consists of randomly assigning each monthly sample panel into 24 groups of approximately 12,000 addresses each. Each group, called a methods panel group, within a monthly sample is representative of the full monthly sample. Each monthly sample is a representative subsample of the entire annual sample and is representative of the sampling frame.

The Census Bureau proposes to test the data slide as part of the ACS May 2018 panel, adhering to the same data collection protocols as production ACS. The Census Bureau proposes to use two randomly selected methods panel groups for each treatment. Hence, each treatment will have a sample size of approximately 24,000 addresses. In total, approximately 48,000 addresses will be used for the two experimental treatments. Additionally, 24,000 addresses will receive the current production mail materials, but will be sorted and mailed at the same time as the other treatment materials and serve as the control for statistical comparison. The remaining sample will receive production materials.

The Census Bureau proposes to evaluate treatment comparisons by comparing self-response rates at various points in the mailing schedule and by comparing the final response rates. For each comparison a two-tailed test will be used so that the Census Bureau can measure the impact on the evaluation measure in either direction with 80 percent power, at the α=0.1 level. The effective samples were calculated based on the previous year's data for the May panel. The sample size will be able to detect differences of approximately 1.25 percentage points between the self-response return rates of the control and experimental treatments. Additionally, a cost analysis will also be conducted.

Affected Public: Individuals or households.

Frequency: One-time test as part of the monthly American Community Survey.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141, 193, and 221.

This information collection request may be viewed at www.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.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2018–00085 Filed 1–5–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a public meeting on Thursday, February 1, 2018, from 1:00 p.m.–4:00 p.m. Eastern Time (ET) and Friday, February 2, 2018, from 9:00 a.m.–12:00 p.m. ET. During this time, members will hear from Federal innovation and entrepreneurship policymakers and program executives and discuss potential policies that would foster innovation, increase the rate of technology commercialization, and catalyze the creation of jobs in the United States. Topics to be covered include increasing early-stage high-growth company exports, increased economic dynamism through innovation and entrepreneurship, apprenticeships in entrepreneurship and high-growth technology sectors, and alignment of federal innovation and entrepreneurship policies and programs.

DATES:

Thursday, February 1, 2018
Time: 1:00 p.m.–4:00 p.m. ET
Friday, February 2, 2018
Time: 9:00 a.m.–12:00 p.m. ET

ADDRESSES: Herbert Clark Hoover Building (HCHB), 1401 Constitution Ave. NW, Washington, DC 20230, Room 72015. The entrance to HCHB is located on the west side of 14th St. NW between D St. NW and Constitution Ave. NW, and a valid government-issued ID is required to enter the building. Please note that pre-clearance is required in order to both attend the meeting in person and make a statement during the public comment portion of the meeting. Please limit comments to five minutes or less and submit a brief statement summarizing your comments to Craig Buerstatte (see contact information below) no later than 11:59 p.m. ET on Friday, January 26, 2018.

Teleconference

Teleconference and/or web conference connection information will be published prior to the meeting along with the agenda on the NACIE website at *https://www.eda.gov/oie/nacie/.*

SUPPLEMENTARY INFORMATION: NACIE, established by Section 25(c) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3720(c)), and managed by EDA's Office of Innovation and Entrepreneurship (OIE), is a Federal Advisory Committee Act (FACA) committee that provides advice directly to the Secretary of Commerce. NACIE's advice focuses on transformational policies and programs that aim to accelerate innovation and increase the rate at which research is translated into companies and jobs, including through entrepreneurship and the development of an increasingly skilled, globally competitive workforce. Comprised of successful entrepreneurs, innovators, angel investors, venture capitalists, and leaders from the nonprofit and academic sectors, NACIE has presented to the Secretary recommendations from throughout the research-to-jobs continuum regarding topics including improving access to capital, growing and connecting entrepreneurial ecosystems, increasing small business-driven research and development, and understanding the workforce of the future. In its advisory capacity, NACIE also serves as a vehicle for ongoing dialogue with the innovation, entrepreneurship, and workforce development communities.

The final agenda for the meeting will be posted on the NACIE website at *http://www.eda.gov/oie/nacie/* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning the NACIE's affairs at any time before or after the meeting. Comments may be submitted to Craig Buerstatte (see contact information below). Those unable to attend the meetings in person but wishing to listen to the proceedings can do so via teleconference (see above). Copies of the meeting minutes will be available by request within 90 days of the meeting date.

FOR FURTHER INFORMATION CONTACT: Craig Buerstatte, Office of Innovation and Entrepreneurship, Room 78018, 1401 Constitution Avenue NW, Washington, DC 20230; email: *nacie@doc.gov;* telephone: +1 202 482 8001; fax: +1 202 273 4781. Please reference ''NACIE February 2018 Meeting'' in the subject line of your correspondence.

Dated: December 28, 2017.

Craig Buerstatte,

Acting Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2018–00139 Filed 1–5–18; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–833]

Citric Acid and Certain Citrate Salts From Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Critical Circumstances Determination, in Part, and Postponement of Final Determination and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that citric acid and certain citrate salts (citric acid) from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable: January 8, 2018.

FOR FURTHER INFORMATION CONTACT: Joy Zhang (COFCO), George McMahon (Niran), or Cindy Robinson (Sunshine), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168, (202) 482–1167, or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 30, 2017.[1] On November 1, 2017, Commerce postponed the preliminary determination of this investigation and the revised deadline is now December 29, 2017.[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

[1] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 29828 (June 30, 2017) (*Initiation Notice*) and accompanying Initiation Checklist.

[2] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Postponement of Preliminary Determinations of Less-Than-Fair-Value Investigation,* 82 FR 50622 (November 1, 2017) (*Preliminary Postponement Notice*).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Antidumping Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Postponement of Final Determination and Extension of Provisional Measures in the Less-

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 Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://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 citric acid from Thailand. For a complete discussion 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 for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of this 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.*

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has also calculated export and constructed export prices in accordance with section 772 of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances exist for one of the mandatory respondents, Niran, but do not exist for COFCO, Sunshine and all-other producers and/or exporters. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated the all-others rate based on a weighted average of the estimated weighted-average dumping margins calculated for the three mandatory respondents: COFCO, Niran, and Sunshine, none of which are zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others' rate using a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's business proprietary data for the merchandise under consideration.[7]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
COFCO Biochemical (Thailand) Co., Ltd. (COFCO)	15.73
Niran (Thailand) Co., Ltd. (Niran)	12.95
Sunshine Biotech International Co., Ltd. (Sunshine)	4.77
All-Others	10.55

Suspension of Liquidation

In accordance with section 733(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 Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by Niran. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from Niran that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate.

Than-Fair-Value Investigation of Citric Acid and Certain Citrate Salts from Thailand'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[5] *See Initiation Notice,* 82 FR at 29836.

[6] *See* Memorandum titled ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated December 1, 2017 (Preliminary Scope Decision Memorandum).

[7] For a complete analysis of the data, please *see* the All-Others Rate Calculation Memorandum dated concurrently with this notice.

However, in the companion CVD preliminary determination, Commerce has preliminarily determined that no countervailable subsidies are being provided to the production or exportation of subject merchandise and therefore, Commerce did not direct CBP to suspend liquidation of any such entries. Accordingly, we made no adjustment for the export subsidy offset to the estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

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

Verification

As provided in section 782(i)(1) of the Act, Commerce intends 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.[8] 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.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On November 29, 2017, pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(e)(1), the petitioners requested that, if the preliminary determination in the above-referenced investigation is negative, Commerce postpone the final determination in accordance with 19 CFR 351.210(b)(2)(i).[9] On December 1, 2017, COFCO and Niran, and on December 4, 2017, Sunshine requested that, in the event of an affirmative preliminary determination, Commerce postpone the final determination, and that provisional measures be extended by the corresponding period of extension (*e.g.,* by an additional 60 days), which represents a period not to exceed six months.[10]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the **Federal Register**, and we are extending provisional measures from four months to a period not to exceed six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its affirmative preliminary 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 Commerce's final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.[11]

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 29, 2017.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

The scope also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate.

The scope includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

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

[9] *See* Letter from the petitioners titled, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Thailand: Petitioners' Request for Postponement of Final Determination," dated November 29, 2017.

[10] *See* Letter from COFCO and Niran titled, "Conditional Request for Extension of Final Determination," dated December 1, 2017; *see also* Letter from Sunshine titled, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Thailand: Request for Postponement of Final Determination and Provisional Measures Period," dated December 4, 2017.

[11] *See* section 735(b)(2) of the Act.

The scope does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope Comments
VI. Scope of the Investigation
VII. Preliminary Determination of Critical Circumstances
VIII. Discussion of the Methodology
A. Determination of the Comparison Method
B. Results of the Differential Pricing Analysis
IX. Date of Sale
X. Product Comparisons
XI. Export Price and Constructed Export Price
XII. Normal Value
A. Comparison Market Viability
B. Level of Trade
C. Cost of Production (COP) Analysis
1. Calculation of COP
2. Test of Comparison Market Sales Prices
3. Results of the COP Test
D. Calculation of NV Based on Comparison Market Prices
E. Calculation of NV Based on Constructed Value
XIII. Currency Conversion
XIV. Verification
XV. Recommendation

[FR Doc. 2018–00132 Filed 1–5–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–813]

Citric Acid and Certain Citrate Salts From Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that citric acid and certain citrate salts (citric acid) from Belgium are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable: January 8, 2018.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 30, 2017.[1] On November 1, 2017, Commerce postponed the preliminary determination of this investigation and the revised deadline is now December 29, 2017.[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 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 the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is citric acid from Belgium. 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.*

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others

[1] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 29828 (June 30, 2017) (*Initiation Notice*).

[2] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Postponement of Preliminary Determinations of Less-Than-Fair-Value Investigations,* 82 FR 50622 (November 1, 2017).

[3] *See* the Department's memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Citric Acid and Certain Citrate Salts from Belgium,'' 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*, 82 FR at 29829.

[6] *See* the Department's memorandum, ''Citric Acid and Certain Citrate Salts from Belgium, Colombia and Thailand; and Countervailing Duty Investigation of Citric Acid and Certain Citrate Salts from Thailand: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated December 1, 2017 (Preliminary Scope Decision Memorandum).

rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for S.A. Citrique Belge N.V. (Citrique Belge), the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Citrique Belge is the margin assigned to all-other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
S.A. Citrique Belge N.V	24.41
All-Others	24.41

Suspension of Liquidation

In accordance with section 733(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 Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

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

Verification

As provided in section 782(i)(1) of the Act, Commerce intends 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.[7] 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.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On November 30, 2017, Citrique Belge requested that Commerce postpone the final determination in the event of an affirmative preliminary determination, and on December 1, 2017, Citrique Belge re-submitted its request to postpone the final determination to also request that provisional measures be extended from a four-month period to a six-month period, pursuant to section 733(d) of the Act.[8] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a six-month period. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary 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 whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

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

[8] *See* Citrique Belge's letter, ''Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Respondent's Request for Postponement of Final Determination,'' dated November 30, 2017, as amended by Citrique Belge's letter, ''Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Respondent's Request for Postponement of Final Determination,'' dated December 1, 2017.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 29, 2017.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

The scope also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate.

The scope includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

The scope does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–00133 Filed 1–5–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) is conducting the administrative review of the antidumping duty order on magnesium metal from the People's Republic of China (China), covering the period April 1, 2016, through March 31, 2017. Commerce preliminarily determines that Tianjin Magnesium International, Co., Ltd. (TMI) and Tianjin Magnesium Metal, Co., Ltd. (TMM) did not have reviewable entries during the period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable January 8, 2018.

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–3965.

Background

On April 3, 2017, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on magnesium metal from China for the POR.[1] On June 7, 2017, in response to a timely request from the petitioner,[2] and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on magnesium metal from China with respect to TMI and TMM.[3]

Scope of the Order

The product covered by this antidumping duty order is magnesium metal from China, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this order includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy'' [4] and are thus outside the scope of the existing antidumping orders on magnesium from China (generally referred to as ''alloy'' magnesium).

The scope of this order excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [5]; (2) magnesium that is in liquid

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 82 FR 16163 (April 3, 2017).

[2] *See* letter from US Magnesium LLC (the petitioner), ''Magnesium Metal from the People's Republic of China: Request for Administrative Review,'' dated April 28, 2017.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 26444 (June 7, 2017).

[4] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[5] The material is already covered by existing antidumping orders. *See Notice of Antidumping*

Continued

or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Preliminary Determination of No Shipments

We received timely submissions from TMI and TMM certifying that they did not have sales, shipments, or exports of subject merchandise to the United States during the POR.[7] On June 29, 2017, we requested the U.S. Customs and Border Protection (CBP) data file of entries of subject merchandise imported into the United States during the POR, and exported by TMM and/or TMI.[8] This query returned no entries during the POR.[9] Additionally, in order to examine TMM's and TMI's claim, we sent an inquiry to CBP requesting that any CBP officer alert Commerce if he/she had information contrary to these no-shipments claims.[10] We received no notification from CBP of any entries of subject merchandise concerning these companies.

Because we have not received information to the contrary from CBP, consistent with our practice, we preliminarily determine that TMI and TMM had no shipments and, therefore, no reviewable entries during the POR. In addition, we find it is not appropriate to rescind the review with respect to these companies but, rather, to complete the review with respect to TMI and TMM and issue appropriate instructions to CBP based on the final results of the review, consistent with our practice in non-market economy (NME) cases.[11]

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice in the **Federal Register**.[12] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the date for filing case briefs.[13] Parties who submit arguments are requested to submit with each argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[14] Parties submitting briefs should do so pursuant to Commerce's electronic filing system: Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[15] ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days of the date of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date of the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Unless extended, we intend to issue the final results of this administrative review, including our analysis of all issues raised in any written brief, within 120 days of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[16] We intend to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Pursuant to Commerce's practice in NME cases, if we continue to determine in the final results that TMI and TMM had no shipments of subject merchandise, any suspended entries of subject merchandise during the POR from these companies will be liquidated at China-wide rate.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) For TMI, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI in the most recently completed review of the company; (2) for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate (including TMM, which claimed no shipments, but has not been found to be

Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation, 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[6] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel,* 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

[7] *See* letter from TMI, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium International, Ltd.,'' dated July 3, 2017, at 1. *See* letter from TMM, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium Metal, Co., Ltd.,'' dated July 5, 2017, at 1.

[8] *See* memorandum to the File, ''U.S. Customs and Border Protection Data,'' dated October 12, 2017 (CBP Memo), at Attachment 1.

[9] *Id.* at Attachment 2.

[10] *See* CBP message 7237305, dated 08/25/2017, provided at Attachment 3 to the CBP Memo.

[11] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 2014–2015,* 81 FR 72567 (October 20, 2016) and the ''Assessment Rates'' section, below.

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d)(1)(2).

[14] *See* 19 CFR 351.309(c)(2), (d)(2).

[15] *See* 19 CFR 351.303 (for general filing requirements).

[16] *See* 19 CFR 351.212(b)(1).

[17] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

separate from China-wide entity), the cash deposit rate will be China-wide rate of 141.49 percent; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 27, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–00113 Filed 1–5–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–803]

Citric Acid and Certain Citrate Salts From Colombia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that citric acid and certain citrate salts (citric acid) from Colombia are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable: January 8, 2018.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 30, 2017.[1] On November 1, 2017, Commerce postponed the preliminary determination of this investigation until December 29, 2017.[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 Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://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 products covered by this investigation are citric acid and certain citrate salts (citric acid) from Colombia. 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 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 did not preliminarily modify the scope language as it appeared in the *Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Export prices are calculated in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminary determines that critical circumstances do not exist for the mandatory respondent, Sucroal S.A. (Sucroal), or for exporters and producers not individually examined (*i.e.,* ''all-others''). For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers

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[1] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 29828 (June 30, 2017) (*Initiation Notice*) and accompanying Initiation Checklist.

[2] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Postponement of Preliminary Determinations of Less-Than-Fair-Value Investigations,* 82 FR 50622 (November 1, 2017) (*Preliminary Postponement Notice*).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Antidumping Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Postponement of Final Determination and Extension of Provisional Measures in the Less-Than-Fair-Value Investigation of Citric Acid and Certain Citrate Salts from Colombia'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[5] *See Initiation Notice,* 82 FR at 29836.

[6] *See* Memorandum from Erin Begnal, Director, Office III, to 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, titled ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated December 1, 2017 (Preliminary Scope Comments Decision Memorandum).

individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Sucroal, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely under section 776 of the Act, the estimated weighted-average dumping margin calculated for Sucroal is the margin assigned to all-other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Sucroal S.A	27.48
All-Others	27.48

Suspension of Liquidation

In accordance with section 733(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, *see* Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not the respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

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

Verification

As provided in section 782(i)(1) of the Act, Commerce intends 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.[7] 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.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On November 29, 2017, the petitioners, Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC, requested that, if the preliminary determination in this investigation was negative, Commerce postpone the final determination pursuant to 19 CFR 351.210(b)(2)(i).[8] On December 12, 2017, Sucroal requested that, if the preliminary determination in this investigation was affirmative, Commerce postpone the final determination pursuant to 19 CFR 351.210(b)(2)(ii) and that provisional measures be extended not to exceed six months pursuant to 19 CFR 351.210(e).[9]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a six-month period. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary 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 whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

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

[8] *See* Petitioners' Letter, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Colombia: Petitioners' Request for Postponement of Final Determination," dated November 29, 2017.

[9] *See* Sucroal's Letter, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Colombia: Respondent's Request for Postponement of Final Determination," dated December 12, 2017.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 29, 2017.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

The scope also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate.

The scope includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

The scope does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–00131 Filed 1–5–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF931

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non Pollock Groundfish Fishery

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

ACTION: Notice of fee rate adjustment.

SUMMARY: NMFS issues this notice to increase the fee rate for the non-pollock groundfish fishery to repay the $35,000,000 reduction loan to finance the non-pollock groundfish fishing capacity reduction program.

DATES: The non-pollock groundfish program fee rate increase will begin on January 1, 2018. The first due date for fee payments with the increased rate will be February 15, 2018.

ADDRESSES: Send questions about this notice to Paul Marx, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Paul Marx, (301) 427–8799.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a (b) through e) generally authorizes fishing capacity reduction programs. In particular, section 312(d) authorizes industry fee systems for repaying reduction loans, which finance reduction program costs. Subpart L of 50 CFR part 600 is the framework rule generally implementing section 312(b)–(e). Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorize reduction loans.

Enacted on December 8, 2004, section 219, Title II, of FY 2005 Appropriations Act, Public Law 104–447 (Act) authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands (''BSAI'') *non-pollock groundfish* fishery (''reduction fishery'') as set forth in the Act.

The longline catcher processor subsector (the ''Longline Subsector'') is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act.

The longline subsector non-pollock groundfish reduction program's objective was to reduce the number of vessels and permits endorsed for longline subsector of the non-pollock groundfish fishery.

All post-reduction fish landings from the reduction fishery are subject to the longline subsector non-pollock groundfish program's fee.

NMFS proposed the implementing notice on August 11, 2006 (71 FR 46364), and published the final notice on September 29, 2006 (71 FR 57696).

NMFS allocated the $35,000,000 reduction loan (A Loan) to the reduction fishery and this loan is repayable by fees from the fishery.

On September 24, 2007, NMFS published in the **Federal Register** (72 FR 54219), the final rule to implement the industry fee system for repaying the non-pollock groundfish program's reduction loan and established October 24, 2007, as the effective date when fee collection and loan repayment began. The regulations implementing the program are located at § 600.1012 of 50 CFR part 600, subpart M.

NMFS published, in the **Federal Register** on November 2, 2009 (74 FR 56592), a notice to decrease the A Loan fee rate to $0.016 per pound effective January 1, 2010. On November 12, 2010, NMFS published a notice (75 FR 69401), to decrease the fee rate to $0.015 per pound, effective January 1, 2011. NMFS published a notice on November 30, 2011 (76 FR 74048) to decrease the fee rate to $0.0145 per pound effective January 1, 2012. NMFS published a notice on February 13, 2013 (78 FR 10136) to further decrease the fee rate once more to $0.0111 per pound effective January 1, 2013.

NMFS published a final rule to implement a second $2,700,000 reduction loan (B Loan) for this fishery in the **Federal Register** on September 24, 2012 (77 FR 58775). The loan was disbursed December 18, 2012, with fee collection of $0.001 per pound to begin January 1, 2013. This fee is in addition to the A Loan fee.

II. Purpose

The purpose of this notice is to adjust the fee rate for the reduction fishery in accordance with the framework rule's § 600.1013(b). Section 600.1013(b) directs NMFS to recalculate the fee rate that will be reasonably necessary to ensure reduction loan repayment within the specified 30-year term.

NMFS has determined for the reduction fishery that the current fee rate of $0.0111 per pound is less than that needed to service the A Loan. Therefore, NMFS is increasing the A Loan fee rate to $0.013 per pound, which NMFS has determined is sufficient to ensure timely loan repayment. The fee rate for the B Loan will remain $0.001 per pound.

Subsector members may continue to use *Pay.gov* to disburse collected fee deposits at: *http://www.pay.gov/paygov/.*

Please visit the NMFS website for additional information at: *http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm.*

III. Notice

The new fee rate for the non-pollock Groundfish fishery will begin on January 1, 2018.

From and after this date, all subsector members paying fees on the non-pollock groundfish fishery shall begin paying non-pollock groundfish fishery program fees at the revised rate.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on September 24, 2007 (72 FR 54219).

Dated: January 3, 2018.

Samuel D. Rauch, III,

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

[FR Doc. 2018–00136 Filed 1–5–18; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on January 31, 2018, from 10:00 a.m. to 4:00 p.m., the Market Risk Advisory Committee (MRAC) will hold a public meeting in the Conference Center at the CFTC's Washington, DC, headquarters. At this meeting, the MRAC will: (1) Discuss the self-certification process for listing new products on CFTC-regulated Designated Contract Markets and Swap Execution Facilities and (2) explore how new and novel products are considered and analyzed by CFTC staff from a risk perspective.

DATES: The meeting will be held on January 31, 2018, from 10:00 a.m. to 4:00 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by February 7, 2018.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Written statements should be submitted by mail to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, attention: Office of the Secretary; or by electronic mail to: *secretary@cftc.gov.* Please use the title ''Market Risk Advisory Committee'' in any written statement you submit. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Alicia L. Lewis, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5862.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 1–866–844–9416.

International Toll and Toll Free: Will be posted on the CFTC's website, *http://www.cftc.gov,* on the page for the meeting, under Related Links.

Pass Code/Pin Code: 1834106.

The meeting agenda may change to accommodate other MRAC priorities. For agenda updates, please visit the MRAC committee site at: *http://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

Authority: 5 U.S.C. app. 2 sec. 10(a)(2).

Dated: January 3, 2018.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2018–00111 Filed 1–5–18; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Lake Eufaula Advisory Committee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Lake Eufaula Advisory Committee (LEAC). The meeting is open to the public.

DATES: The Committee will meet from 10:00 a.m.–12:00 p.m. on Monday, January 29, 2018.

ADDRESSES: Legacy on Main Street, 224 North Main Street, Eufaula, OK 74432.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Knack; Designated Federal Officer (DFO) for the Committee, in writing at Eufaula Lake Office, 102 E BK 200 Rd, Stigler, OK 74462–1829, or by email at *Jeff.Knack@usace.army.mil,* or by phone at 1–918–484–5135.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (41 CFR 102–3.150).

Purpose of the Meeting: The Lake Eufaula Advisory Committee is an independent Federal advisory committee established as directed by Section 3133(b) of the Water Resources Development Act of 2007 (WRDA 2007) (Pub. L. 110–114). The committee is advisory in nature only with duties to include providing information and recommendations to the Corps of Engineers regarding operations of Eufaula Lake, Oklahoma for project purposes. In accordance with Sections 3133(c)(2) and 3133(d)(1) of WRDA 2007, the committee will also provide recommendations on a reallocation study concerning current and future use of the Lake Eufaula storage capacity for authorized project purposes as well as a subsequent pool management plan.

Agenda: This will be the fourth meeting of the LEAC. The committee will provide recommendations to the U.S. Army Corps of Engineers about a reallocation study and lake level manipulation plan, and discuss future direction of the LEAC.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Legacy on Main Street is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Mr. Jeff Knack, the Committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Mr. Knack, the Committee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer and the Committee Chair will review all timely submitted written comments or statements and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Please note that because the LEAC operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) days in advance to the Committee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Officer will log each request, in the order received, and in consultation with the Committee Chair determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the Designated Federal Officer.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–00102 Filed 1–5–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0001]

Agency Information Collection Activities; Comment Request; Impact Evaluation of Departmentalized Instruction in Elementary Schools

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 9, 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–0001. 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, 400 Maryland Avenue SW, LBJ, Room 216–32, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Thomas Wei, 202–341–0626.

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: Impact Evaluation of Departmentalized Instruction in Elementary Schools.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 2,844.

Total Estimated Number of Annual Burden Hours: 1,091.

Abstract: This package requests clearance for data collection activities to support an evaluation of departmentalized instruction in elementary schools. This evaluation is authorized by Title VII Section 8601 of the Elementary and Secondary Education Act, as amended most recently in 2015 by the Every Student Succeeds Act (ESSA). ESSA gives states considerable flexibility in designing systems to hold their schools accountable for improving student achievement. This flexibility extends to the types of strategies that states encourage or require their low-performing schools to adopt. However, many strategies in use have little to no evidence of effectiveness. More research is needed to help states identify strategies that are likely to help their low-performing schools improve.

One potential strategy that has recently become more popular in upper elementary school grades is to departmentalize instruction, where each teacher specializes in teaching one subject to multiple classes of students instead of teaching all subjects to a single class of students (self-contained instruction). However, virtually no evidence exists on its effectiveness relative to the more traditional self-contained approach. This evaluation will help to fill the gap by examining whether departmentalizing fourth and fifth grade teachers improves teacher and student outcomes. The evaluation will focus on math and reading, with an emphasis on low-performing schools that serve a high percentage of disadvantaged students.

The evaluation will include implementation and impact analyses. The implementation analysis will describe schools' approaches to departmentalization and benefits and challenges encountered. The analysis will be based on information from schools' study agreement form; meetings to design each school's approach to departmentalization; monitoring and support calls with schools; a principal interview; and a teacher survey. The impact analysis will draw on data from a teacher survey, videos of classroom instruction, a principal interview, and district administrative records to estimate the impact of departmentalized instruction on various outcomes. The outcomes include the quality of instruction and student-teacher relationships, teacher satisfaction and retention, and student achievement and behavior. These various data collection activities will be carried out between spring 2018 and fall 2020, although most of the activities with the exception of the administrative data will take place only once during the first year treatment schools implement departmentalized instruction (2018–2019 school year).

Dated: January 3, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–00108 Filed 1–5–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–43–000.

Applicants: South Central MCN LLC.

Description: Application of South Central MCN LLC for Authorization under Section 203 of the Federal Power Act, et al.

Filed Date: 12/29/17.

Accession Number: 20171229–5213.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: EC18–44–000.

Applicants: Otter Tail Power Company.

Description: Request For Approvals Pursuant to Section 203 of the Federal Power Act of Otter Tail Power Company.

Filed Date: 12/29/17.

Accession Number: 20171229–5234.

Comments Due: 5 p.m. ET 1/19/18.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–26–000.

Applicants: Lincoln Clean Energy, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status (Tahoka Wind, LLC).

Filed Date: 12/29/17.

Accession Number: 20171229–5278.

Comments Due: 5 p.m. ET 1/19/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3199–004.

Applicants: MDU Resources Inc.

Description: Updated Market Analysis in the Central Region of MDU Resources Inc.

Filed Date: 12/29/17.

Accession Number: 20171229–5282.

Comments Due: 5 p.m. ET 2/27/18.

Docket Numbers: ER15–1596–005; ER15–1599–005; ER14–1569–006; ER10–2616–012; ER11–4398–007; ER11–4400–009; ER15–1958–004; ER10–3247–012; ER14–922–005; ER14–883–007; ER14–924–005; ER15–2535–002.

Applicants: Dynegy Commercial Asset Management, LLC, Dynegy Energy Services (East), LLC, Dynegy Energy Services, LLC, Dynegy Marketing and Trade, LLC, Dynegy Midwest Generation, LLC, Dynegy Power Marketing, LLC, Dynegy Resources Management, LLC, Electric Energy, Inc., Illinois Power Generating Company, Illinois Power Marketing Company, Illinois Power Resources Generating, LLC, Midwest Electric Power, Inc.

Description: Updated Market Power Analysis of the Dynegy Central MBR Sellers.

Filed Date: 12/29/17.

Accession Number: 20171229–5225.

Comments Due: 5 p.m. ET 2/27/18.

Docket Numbers: ER18–573–000.

Applicants: Montpelier Generating Station, LLC.

Description: § 205(d) Rate Filing: Reactive Power Rate Schedule to be effective 12/31/9998.

Filed Date: 12/29/17.

Accession Number: 20171229–5204.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–574–000.

Applicants: Monument Generating Station, LLC.

Description: § 205(d) Rate Filing: Reactive Power Rate Schedule to be effective 12/31/9998.

Filed Date: 12/29/17.

Accession Number: 20171229–5205.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–575–000.

Applicants: O.H. Hutchings CT, LLC.

Description: § 205(d) Rate Filing: Reactive Power Rate Schedule to be effective 12/31/9998.

Filed Date: 12/29/17.

Accession Number: 20171229–5206.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–576–000.

Applicants: Sidney, LLC.

Description: § 205(d) Rate Filing: Reactive Power Rate Schedule to be effective 12/31/9998.

Filed Date: 12/29/17.
Accession Number: 20171229–5207.
Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–577–000.
Applicants: Tait Electric Generating Station, LLC.
Description: § 205(d) Rate Filing: Reactive Power Rate Schedule to be effective 12/31/9998.
Filed Date: 12/29/17.
Accession Number: 20171229–5208.
Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–578–000.
Applicants: Yankee Street, LLC.
Description: § 205(d) Rate Filing: Reactive Power Rate Schedule to be effective 12/31/9998.
Filed Date: 12/29/17.
Accession Number: 20171229–5209.
Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–579–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT Sch 12-Appdx and Appdx A re: 2018 RTEP Annual Cost Allocations to be effective 1/1/2018.
Filed Date: 12/29/17.
Accession Number: 20171229–5210.
Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–580–000.
Applicants: PE Berkeley, Inc.
Description: Tariff Cancellation: PE Berkeley Notice of Cancellation to be effective 1/2/2018.
Filed Date: 1/2/18.
Accession Number: 20180102–5000.
Comments Due: 5 p.m. ET 1/23/18.

Docket Numbers: ER18–581–000.
Applicants: Public Service Company of New Mexico.
Description: Initial rate filing: 62 MW TSA No. 493 between PNM and Avangrid Renewables to be effective 12/18/2017.
Filed Date: 1/2/18.
Accession Number: 20180102–5223.
Comments Due: 5 p.m. ET 1/23/18.

Docket Numbers: ER18–582–000.
Applicants: Public Service Company of New Mexico.
Description: Initial rate filing: 100 MW TSA No. 494 between PNM and Avangrid Renewables to be effective 12/18/2017.
Filed Date: 1/2/18.
Accession Number: 20180102–5224.
Comments Due: 5 p.m. ET 1/23/18.

Docket Numbers: ER18–583–000.
Applicants: Public Service Company of New Mexico.
Description: Initial rate filing: 100 MW TSA No. 495 between PNM and Avangrid Renewables to be effective 12/18/2017.
Filed Date: 1/2/18.
Accession Number: 20180102–5225.
Comments Due: 5 p.m. ET 1/23/18.

Docket Numbers: ER18–584–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: 100 MW First Revised TSA No. 494 between PNM and Avangrid Renewables to be effective 12/20/2017.
Filed Date: 1/2/18.
Accession Number: 20180102–5226.
Comments Due: 5 p.m. ET 1/23/18.

Docket Numbers: ER18–585–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: 100 MW First Revised TSA No. 495 between PNM and Avangrid Renewables to be effective 12/20/2017.
Filed Date: 1/2/18.
Accession Number: 20180102–5227.
Comments Due: 5 p.m. ET 1/23/18.

Docket Numbers: ER18–586–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Queue Position AC2–137, Original Service Agreement No. 4880 to be effective 12/1/2017.
Filed Date: 1/2/18.
Accession Number: 20180102–5228.
Comments Due: 5 p.m. ET 1/23/18.

Docket Numbers: ER18–587–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) Rate Filing: Generator Interconnection Agreement to be effective 3/5/2018.
Filed Date: 1/2/18.
Accession Number: 20180102–5323.
Comments Due: 5 p.m. ET 1/23/18.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES18–18–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Application of Michigan Electric Transmission Company, LLC under Section 204 of the Federal Power Act.
Filed Date: 1/2/18.
Accession Number: 20180102–5106.
Comments Due: 5 p.m. ET 1/23/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 2, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–00097 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP18–295–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Compliance filing Compliance Tariff Filing re CP15–517–000 (Coastal Bend) to be effective 2/1/2018.
Filed Date: 12/29/17.
Accession Number: 20171229–5021.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–296–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Compliance filing Compliance Negotiated Rate Agmt Tariff Filing re CP15–517–000 (Coastal Bend) to be effective 2/1/2018.
Filed Date: 12/29/17.
Accession Number: 20171229–5025.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–297–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 122917 154.204 Tariff Filing to be effective 3/1/2018.
Filed Date: 12/29/17.
Accession Number: 20171229–5039.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–298–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: CCRM 2018 to be effective 2/1/2018.
Filed Date: 12/29/17.
Accession Number: 20171229–5143.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–298–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: CCRM 2018 to be effective 2/1/2018.
Filed Date: 12/29/17.

Accession Number: 20171229–5144.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–299–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2017–12–29 Encana to be effective 12/29/2017.
Filed Date: 12/29/17.
Accession Number: 20171229–5151.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–300–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Negotiated Rate PAL Agreement—EDF Trading North America, LLC to be effective 12/29/2017.
Filed Date: 12/29/17.
Accession Number: 20171229–5153.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–301–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 122917 Negotiated Rates—Mercuria Energy America, Inc. H–7540–89 to be effective 12/29/2017.
Filed Date: 12/29/17.
Accession Number: 20171229–5157.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–302–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 122917 Negotiated Rates—Consolidated Edison Energy, Inc. H–2275–89 to be effective 12/29/2017.
Filed Date: 12/29/17.
Accession Number: 20171229–5160.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–303–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20171229 Negotiated Rate to be effective 1/1/2018.
Filed Date: 12/29/17.
Accession Number: 20171229–5203.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–304–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Jan 2018) to be effective 1/1/2018.
Filed Date: 12/29/17.
Accession Number: 20171229–5211.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: RP18–275–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: 122617 Tariff Filing (Conoco Dec 23, 2017) to be effective 12/23/2017.
Filed Date: 12/26/17.
Accession Number: 20171226–5211.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: PR18–15–000.
Applicants: SCOOP Express.
Description: § 4(d) Rate Filing: Tariff Filing (SCOOP Express Dec, 2017), to be effective 12/22/2017.
Filed Date: 12/22/17.
Accession Number: 2017122–5211.
Comments Due: 5 p.m. ET 1/10/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 2, 2018.

Nathaniel J. Davis Sr.,

Deputy Secretary.

[FR Doc. 2018–00098 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082–062; Project No. 14803–000]

Notice of Tribal Consultation Meetings; PacifiCorp, Klamath River Renewal Corporation

On September 23, 2016, and supplemented on March 1, 2017, and June 23, 2017, PacifiCorp and the Klamath River Renewal Corporation (Renewal Corporation) filed an application to amend the existing Klamath Project No. 2082 to administratively remove the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments from the license and create a new project, the Lower Klamath Project No. 14803, for those developments. The applicants also request the Lower Klamath Project be transferred to the Renewal Corporation which, if the Commission were to approve its surrender application in a separate proceeding, would then surrender the project license and remove the above four developments.

The Commission will hold meetings with representatives of the Hoopa Valley Tribe, Karuk Tribe, Quartz Valley Indian Community, Klamath Tribes, and Yurok Tribe. Meetings will be held at the following locations and will begin at the times shown below:

Hoopa Valley Tribe, Tribal Council Chambers, Hoopa Valley Tribe Neighborhood Facilities, 11860 Highway 96, Hoopa, CA 95546, January 16, 2018, 10:00 a.m. (PST)

Karuk Tribe, Karuk Tribe Housing Authority, 37960 CA-Highway 96, Orleans, CA 95556, January 17, 2018, 10:00 a.m. (PST)

Quartz Valley Indian Community of the Quartz Valley Indian Reservation of California, 13601 Quartz Valley Road, Fort Jones, CA 96032, January 17, 2018, 4:00 p.m. (PST)

Klamath Tribes, Klamath Tribes Administration Building, 501 Chiloquin Boulevard, Chiloquin, OR, January 18, 2018, 10:00 a.m. (PST)

Yurok Tribe, Yurok Tribe Klamath Tribal Office, 190 Klamath Boulevard, Klamath, CA, January 19, 2018, 10:00 a.m. (PST)

Members of the public and intervenors in the referenced proceedings may attend these meetings; however, participation will be limited to tribal representatives and the Commission's representatives. If any tribe decides to disclose information about a specific location which could create a risk or harm to an archaeological site or Native American cultural resource, the public will be excused for that portion of the meeting when such information is disclosed. Each tribal meeting will be transcribed by a court reporter and the transcript will be placed in the public record of these proceedings.

To register for attendance at any of the above meetings, please contact Jennifer Polardino at the Federal Energy Regulatory Commission at (202) 502–6437 or *jennifer.polardino@ferc.gov.*

Dated: December 29, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–00126 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–848–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Motion Filing: Motion in RP17–848 to be effective 1/1/2018.
Filed Date: 12/28/17.
Accession Number: 20171228–5241.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–282–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Compliance filing Annual Accounting Report filed on 12–28–17 to be effective N/A.
Filed Date: 12/28/17.
Accession Number: 20171228–5051.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–283–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Penalty Revenue Crediting Report of Columbia Gulf Transmission, LLC under RP18–283.
Filed Date: 12/28/17.
Accession Number: 20171228–5092.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–284–000.
Applicants: Crossroads Pipeline Company.
Description: Penalty Revenue Crediting Report of Crossroads Pipeline Company under RP18–284.
Filed Date: 12/28/17.
Accession Number: 20171228–5174.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–285–000.
Applicants: Central Kentucky Transmission Company.
Description: Penalty Revenue Crediting Report of Central Kentucky Transmission Company under RP18–285.
Filed Date: 12/28/17.
Accession Number: 20171228–5177.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–286–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Penalty Revenue Crediting Report of Columbia Gas Transmission, LLC under RP18–286.
Filed Date: 12/28/17.
Accession Number: 20171228–5178.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–287–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Jan 2018 to be effective 1/1/2018.
Filed Date: 12/28/17.
Accession Number: 20171228–5185.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–288–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2017–12–28 ConocoPhillips to be effective 12/28/2017.
Filed Date: 12/28/17.
Accession Number: 20171228–5201.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–289–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: EPC FEB 2018 FILING to be effective 2/1/2018.
Filed Date: 12/28/17.
Accession Number: 20171228–5208.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–290–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2018 January Negotiated Rate Agreements to be effective 1/1/2018.
Filed Date: 12/28/17.
Accession Number: 20171228–5240.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–291–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates Filing on 12–28–17 to be effective 1/1/2018.
Filed Date: 12/28/17.
Accession Number: 20171228–5253.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–292–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: DART Conversion Merger Filing to be effective 1/29/2018.
Filed Date: 12/28/17.
Accession Number: 20171228–5263.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–293–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agreement Update (Pioneer) to be effective 2/1/2018.
Filed Date: 12/28/17.
Accession Number: 20171228–5267.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: RP18–294–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rates—BP 511026 eff 1–1–2018 to be effective 1/1/2018.
Filed Date: 12/29/2017.
Accession Number: 20171229–5001.
Comment Date: 5:00 p.m. Eastern Time on Wednesday, January 10, 2018.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 29, 2017.

Nathaniel J. Davis Sr.,

Deputy Secretary.

[FR Doc. 2018–00125 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–44–000]

Notice of Institution of Section 206 Proceeding and Refund Effective Date; Southern California Edison Company

On December 29, 2017, the Commission issued an order in Docket No. EL18–44–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the Proposed Formula Rates of Southern California Edison Company may be unjust and unreasonable. *Southern California Edison Company,* 161 FERC 61,309 (2017).

The refund effective date in Docket No. EL18–44–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL18–44–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC

20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: January 2, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–00092 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–18–000]

Notice of Intent To Prepare an Environmental Assessment for the Transcontinental Gas Pipe Line Company LLC Proposed Gateway Expansion Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Gateway Expansion Project involving construction and operation of facilities Transcontinental Gas Pipe Line Company (Transco) in Essex and Passaic Counties, New Jersey. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 2, 2018.

If you sent comments on this project to the Commission before the opening of this docket on November 16, 2017, you will need to file those comments in Docket No. CP18–18–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Transco provided landowners with a fact sheet prepared by the FERC entitled An Interstate Natural Gas Facility On My Land? What Do I Need To Know? This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number CP18–18–000 with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Transco proposes to perform the following activities for construction of the project.

Compressor Station (CS) 303 (Essex County, New Jersey)

- Expansion of the existing building to include one new 33,000 horsepower (hp) electric-motor driven compression unit and ancillary equipment;
- Install gas cooling equipment;
- Extend existing security fencing to encompass new equipment; and
- A new driveway to connect the new gas cooler location with CS 303.

Roseland Meter and Regulator (M&R), Essex County, New Jersey

- One new 36-inch ML block valve with automation controls; and
- Actuator modification on existing ML block valve.

Paterson M&R, Passaic County, New Jersey

- Remove existing 12-inch headers, meter skid, building, and associated equipment;
- Install a meter skid with two 6-inch ultrasonic meters with 12-inch inlet and outlet headers;
- Install a new M&R building;
- Install new remote terminal unit (RTU)/gas chromatograph building;
- Install new flow computer, radio, and an antenna/pole; and
- Install a new condensate tank.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb 9.43 acres of land, with 9.06 acres being utilized for the CS 303 site and the remaining 0.37 acres utilized for the Paterson M&R site. All proposed land affected is currently in use as Transco existing property. No new land would need to be acquired for operational use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a

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[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, no agency has expressed intention to participate as a cooperating agency in the preparation of the EA.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's website. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP18–18). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: January 2, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–00091 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

[2] We, us, and our refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–33–000]

Notice of Application; Florida Gas Transmission Company, LLC

Take notice that on December 18, 2017, Florida Gas Transmission Company, LLC (Florida Gas), 1300 Main Street, Houston, Texas 77002, filed in Docket No. CP18–33–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, requesting authorization to abandon approximately 1.3 miles of its 18-inch-diameter mainline pipeline facilities and associated appurtenances located in Miami-Dade County, Florida, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Marg Camardello, Regulatory Analyst, Lead, (713) 215–3380, P.O. Box 1396, Houston, Texas 77251; and Ben Carranza, Manager, Rates & Regulatory, (713) 420–5535, 1001 Louisiana Street, Suite 1000, Houston Texas 77002.

Specifically, Florida Gas states that the mainline segment proposed for abandonment spans from Mile Post (MP) 923.6 to the mainline terminus at MP 924.9 and is in direct conflict with Miami-Dade County road construction project including a bridge replacement. Florida Gas also states that there are no firm contracts associated with the facilities to be abandoned and that there were no deliveries of gas through this segment of its mainline in more than three years. The project cost is estimated at $450,000.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on January 23, 2018.

Dated: January 2, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–00090 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1763–003; ER10–1765–003; ER10–1766–003; ER10–1769–003; ER10–1767–003; ER10–1532–003; ER10–1541–004; ER10–1642–005; ER13–2349–002; ER13–2350–002.

Applicants: Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, LLC, Entergy Texas, Inc., Entergy Nuclear Palisades, LLC, Entergy Power, LLC, EWO Marketing, LLC, EAM Nelson Holding, LLC, RS Cogen, LLC, Entergy Services, Inc.

Description: Triennial Market Power Update for the Central Region of the Entergy MBR Utilities.

Filed Date: 12/28/17.

Accession Number: 20171228–5275.

Comments Due: 5 p.m. ET 2/26/18.

Docket Numbers: ER10–1819–017; ER10–1820–020.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation

Description: Triennial Market Power Analysis of Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation.

Filed Date: 12/28/17.

Accession Number: 20171228–5269.

Comments Due: 5 p.m. ET 2/26/18.

Docket Numbers: ER10–2042–025; ER10–1945–006; ER10–1942–017; ER17–696–005; ER10–1938–020; ER10–1934–019; ER10–1893–019; ER10–2985–023; ER10–3049–024; ER10–3051–024; ER10–1871–006; ER11–4369–004; ER16–2218–004; ER10–1862–019.

Applicants: Calpine Energy Services, L.P., Auburndale Peaker Energy Center, LLC, Calpine Construction Finance Company, LP, Calpine Energy Solutions, LLC, Calpine PowerAmerica—CA, LLC, CES Marketing IX, LLC, CES Marketing X, LLC, Champion Energy Marketing LLC, Champion Energy Services, LLC, Champion Energy, LLC, Morgan Energy Center, LLC, North American Power and Gas, LLC, North American Power Business, LLC, Power Contract Financing, L.L.C.

Description: Updated Market Power Analysis for the Calpine Southeast MBR Sellers.

Filed Date: 12/29/17.

Accession Number: 20171229–5161.

Comments Due: 5 p.m. ET 2/27/18.

Docket Numbers: ER10–2063–002.

Applicants: Otter Tail Power Company.

Description: Triennial MBR Report for Central Region of Otter Tail Power Company.

Filed Date: 12/28/17.

Accession Number: 20171228–5302.

Comments Due: 5 p.m. ET 2/26/18.

Docket Numbers: ER10–2211–006.

Applicants: Vandolah Power Company, L.L.C.

Description: Triennial MBR Report for Southeast Region of Vandolah Power Company, L.L.C.

Filed Date: 12/29/17.

Accession Number: 20171229–5117.

Comments Due: 5 p.m. ET 2/27/18.

Docket Numbers: ER10–2739–018; ER10–2743–013; ER12–995–005; ER10–1892–007; ER10–2793–007; ER10–2755–016; ER16–1652–006; ER10–1872–007; ER10–2751–013; ER10–1859–007.

Applicants: LS Power Marketing, LLC, Bluegrass Generation Company, L.L.C., Cherokee County Cogeneration Partners, LLC, Columbia Energy LLC, DeSoto County Generating Company, LLC, Las Vegas Power Company, LLC, LifeEnergy, LLC, Mobile Energy LLC, Renaissance Power, L.L.C., Santa Rosa Energy Center, LLC.

Description: Updated Market Power Analysis of the LS Southeast MBR Sellers.

Filed Date: 12/29/17.

Accession Number: 20171229–5186.

Comments Due: 5 p.m. ET 2/27/18.

Docket Numbers: ER10–2877–002.

Applicants: Cobb Electric Membership Corporation.

Description: Triennial Market Power Update for the Central Region of Cobb Electric Membership Corporation.

Filed Date: 12/29/17.

Accession Number: 20171229–5158.

Comments Due: 5 p.m. ET 2/27/18.

Docket Numbers: ER10–3125–011; ER10–3102–011; ER15–1447–003; ER10–3100–011; ER15–1657–006; ER10–3107–011; ER10–3109–011.

Applicants: AL Sandersville, LLC, Effingham County Power, LLC, Mid-Georgia Cogen L.P., MPC Generating, LLC, SEPG Energy Marketing Services, LLC, Walton County Power, LLC, Washington County Power, LLC.

Description: Updated Market Power Analysis for the Southeast Region of AL Sandersville, LLC, et al.

Filed Date: 12/29/17.

Accession Number: 20171229–5156.

Comments Due: 5 p.m. ET 2/27/18.

Docket Numbers: ER17–2457–002.

Applicants: Rock Creek Wind Project, LLC.

Description: Notice of Non-Material Change in Status of Rock Creek Wind Project, LLC.

Filed Date: 12/29/17.

Accession Number: 20171229–5113.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER17–2577–001.

Applicants: York Haven Power Company, LLC.

Description: Tariff Amendment: Response to AIR to be effective 11/29/2017.

Filed Date: 12/28/17.

Accession Number: 20171228–5261.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–560–000.

Applicants: Northern Indiana Public Service Company.

Description: Market-Based Triennial Review Filing: NIPSCO Triennial Market Power Update to be effective 12/29/2017.

Filed Date: 12/28/17.

Accession Number: 20171228–5254.

Comments Due: 5 p.m. ET 2/26/18.

Docket Numbers: ER18–561–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Revision to Ancillary Services Tariff to be effective 2/26/2018.

Filed Date: 12/28/17.

Accession Number: 20171228–5260.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–562–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 605 7th Rev—NITSA with Bonneville Power Administration to be effective 3/1/2018.

Filed Date: 12/28/17.

Accession Number: 20171228–5264.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–563–000.

Applicants: Red Pine Wind Project, LLC.

Description: § 205(d) Rate Filing: Filing of Red Pine Rate Schedule FERC No. 1 re Reactive Power Compensation to be effective 3/1/2018.

Filed Date: 12/28/17.

Accession Number: 20171228–5265.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–564–000.

Applicants: South Central MCN LLC.

Description: Compliance filing: SCMCN Limited 205 DX Filing to be effective N/A.

Filed Date: 12/28/17.

Accession Number: 20171228–5266.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–565–000.

Applicants: California Independent System Operator Corporation.

Description: Petition for Approval of Disposition of Proceeds of Penalty Assessments of California Independent System Operator Corporation.

Filed Date: 12/28/17.

Accession Number: 20171228–5273.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–566–000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2017–12–29_SA 3077 OTP-East River T–T (Britton) to be effective 1/1/2018.

Filed Date: 12/29/17.

Accession Number: 20171229–5013.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–567–000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2017–12–29_SA 3076 OTP-East River T–T (Load) to be effective 1/1/2018.

Filed Date: 12/29/17.

Accession Number: 20171229–5016.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–568–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, American Transmission Systems, Incorporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT and ATSI submit Two ECSAs SA Nos. 4801 and 4860 to be effective 3/1/2018.

Filed Date: 12/29/17.

Accession Number: 20171229–5018.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–569–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: § 205(d) Rate Filing: 2017 RY 2 to be effective 1/1/2018.

Filed Date: 12/29/17.

Accession Number: 20171229–5019.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–570–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: § 205(d) Rate Filing: 2017 WDS RY 2 to be effective 1/1/2018.

Filed Date: 12/29/17.

Accession Number: 20171229–5020.

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–571–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Attachment AE Revisions to Clarify ILTCRs to be effective 2/27/2018.

Filed Date: 12/29/17.

Accession Number: 20171229–5026

Comments Due: 5 p.m. ET 1/19/18.

Docket Numbers: ER18–572–000.

Applicants: South Central MCN LLC.

Description: Limited Revisions to SPP Transmission Formula Rate Template of South Central MCN LLC.

Filed Date: 12/28/17.

Accession Number: 20171228–5306.

Comments Due: 5 p.m. ET 1/18/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 29, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–00124 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5124–021]

Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests; Washington Electric Cooperative, Inc.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 5124–021.

c. *Dated Filed:* October 30, 2017.

d. *Submitted By:* Washington Electric Cooperative, Inc.

e. *Name of Project:* North Branch No. 3 Hydroelectric Project.

f. *Location:* On the North Branch Winooski River, in Washington County, Vermont. The project does not occupy lands of the United States.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Ms. Patricia Richards, General Manager, Washington Electric Cooperative, Inc., P.O. Box 8, 40 Church Street East Montpelier, Vermont 05651; phone: (802) 223–5245 or email at *patty.richards@wec.coop.*

i. *FERC Contact:* Michael Tust at (202) 502–6522 or email at *michael.tust@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Washington Electric Cooperative, Inc. (WEC) as the Commission's non-federal representatives for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. WEC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–5124–021.

All filings with the Commission must bear the appropriate heading: Comments on Pre-Application Document, Study Requests, Comments on Scoping Document 1, Request for Cooperating Agency Status, or Communications to and from Commission Staff. Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so 60 days following the date of issuance of this notice.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Wednesday, January 24, 2018.
Time: 6:00 p.m. (EST).
Location: Capitol Plaza Hotel and Conference Center, 100 State Street, Montpelier, VT 05602.
Phone: (802) 223–5252.

Daytime Scoping Meeting

Date: Thursday, January 25, 2018.
Time: 9:00 a.m. (EST).
Location: Capitol Plaza Hotel and Conference Center, 100 State Street, Montpelier, VT 05602.
Phone: (802) 223–5252.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the eLibrary link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an Environmental Site Review (site visit) of the project on Wednesday, January 24, 2018, starting at 1:00 p.m. and ending at or about 3:00 p.m. All participants should meet at the base of Wrightsville Dam near the intersection of Mill Road and Corry Road in Montpelier, Vermont 05602. Participants are responsible for their own transportation. Persons with questions about the site visit should contact Dan Weston (802–223–5245; *dan.weston@wec.coop*) or Mark Wamser (603–428–4960; *mwamser@gomezandsullivan.com*).

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: December 29, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–00127 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–12–000]

Notice of Intent To Prepare an Environmental Assessment for the Natural Gas Pipeline Company of America LLC Proposed Herscher Northwest Storage Field Abandonment Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Herscher Northwest Storage Field Abandonment Project involving construction and operation of facilities by Natural Gas Pipeline Company of America LLC (Natural) in Kankakee County, Illinois. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 1, 2018.

If you sent comments on this project to the Commission before the opening of this docket on October 31, 2017, you will need to file those comments in Docket No. CP18–12–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Natural Gas Pipeline Company of America LLC provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling,

you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (C18–12–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Natural proposes to abandon the Herscher Northwest Storage Field with its certificated maximum inventory of 18.5 billion cubic feet (Bcf) located in Kankakee County, Illinois. Natural concludes that in light of the marginal well performance over the years, geologic uncertainty, and new Pipeline and Hazardous Materials Safety Administration Regulations, it is no longer practicable to operate the storage field.

Natural proposes to abandon:

• In place 19 injection/withdrawal wells by permanently plugging and capping;

• In place 16.15 miles of 4- to 16-inch-diameter associated pipeline laterals in the storage field by grouting and capping;

• in place 13 non-jurisdictional observation wells by plugging;

• in place one non-jurisdictional salt water disposal well by plugging;

• in place approximately 15.3 Bcf of non-recoverable cushion gas;

• by removal the 330-horsepower Compressor Station 202 including its building, compressor unit, concrete piers and concrete foundation; and

• by removal all storage field auxiliary surface facilities including, but not limited to, aboveground well head piping, slug catchers, the water gathering system and methanol distribution systems, corrosion monitors, rectifiers and ground beds.

Natural requests certification by May, 2018, and expects to perform its abandonment activities over a four-year period (2018–2021).

The general location of the project facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Land Requirements for Construction

Natural would limit is construction activities to 54 acres of its existing rights-of-way and would restore all workspace to pre-abandonment conditions. Approximately 14 acres would be retained as permanent easements to permit Natural to maintain the abandoned facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

• Geology and soils;
• land use;
• water resources, fisheries, and wetlands;
• cultural resources;
• vegetation and wildlife;
• air quality and noise;
• endangered and threatened species;
• public safety; and
• cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

[2] We, us, and our refer to the environmental staff of the Commission's Office of Energy Projects.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the Document-less Intervention Guide under the e-filing link on the Commission's website. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP18–12–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 2, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–00089 Filed 1–5–18; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Statement of Policy for Participation in the Conduct of the Affairs of an Insured Depository Institution by Persons Who Have Been Convicted or Have Entered a Pretrial Diversion or Similar Program for Certain Offenses Pursuant to Section 19 of the Federal Deposit Insurance Act

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The FDIC seeks to update its Statement of Policy (SOP), which is issued pursuant to Section 19 of the Federal Deposit Insurance Act (FDI Act) (Section 19). Section 19 prohibits, without the prior written consent of the FDIC, any person from participating in banking who has been convicted of a crime of dishonesty or breach of trust or money laundering, or who has entered a pretrial diversion or similar program in connection with the prosecution for such an offense.

Based upon its experience with the application of the SOP since 1998, the FDIC is now proposing to revise and issue an updated SOP and rescind the current SOP, and is seeking comments on the proposed revisions by issuing this **Federal Register** Notice. Notably, in addition to minor format and technical changes, as well as clarifying changes, the FDIC is proposing to expand its current *de minimis* exception to encompass insufficient funds checks of aggregate moderate value; small dollar, simple theft; and isolated, minor offenses committed by young adults. These carefully measured changes are intended to reduce regulatory burden by decreasing the number of covered offenses that will require an application, while ensuring that insured institutions are not subject to risk by convicted persons.

DATES: Comments must be received on or before March 9, 2018.

ADDRESSES: You may submit comments, identified by Section 19, by any of the following methods:

- *Agency website: https://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the Agency website.
- *Email: Comments@fdic.gov.* Include Section 19 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Brian Zeller, Review Examiner, (319) 395–7394 x4125, or Larisa Collado, Section Chief, (202) 898–8509, in the Division of Risk Management Supervision; or Michael P. Condon, Counsel, (202) 898–6536, or Andrea Winkler, Supervisory Counsel, (202) 898–3727 in the Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

Section 19 of the FDI Act (12 U.S.C. 1829) prohibits, without the prior written consent of the FDIC, a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party (IAP), owning or controlling, directly or indirectly an insured depository institution (insured institution), or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured institution. Further, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by Section 19. It also imposes a ten-year ban against the FDIC's consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the FDIC and approval by the sentencing court.

The FDIC issued, after notice and comment, the current SOP for Section

19 of the FDI Act in December 1998 [1] to provide the public with guidance relating to Section 19 and the FDIC's application thereof. The 1998 SOP, among other things, instituted a set of criteria to provide for blanket approval of certain low-risk crimes, and for persons convicted of such *de minimis* crimes to forgo filing an application.

A clarification to the SOP was issued in 2007, based on the 2006 amendment to Section 19 of the FDI Act by the Financial Services Regulatory Relief Act of 2006, Public Law 109–351, § 710, which modified Section 19 to include coverage of institution-affiliated parties (IAPs) participating in the affairs of bank holding companies, or savings and loan holding companies, and gave supervisory authority over such entities to the Board of Governors of the Federal Reserve System (Federal Reserve Board) and the Office of Thrift Supervision (OTS), respectively.[2] The FDIC, in 2011, further clarified the SOP as to: (i) The applicability of Section 19 to IAPs of bank and savings and loan holding companies; (ii) the meaning of the term ''complete expungement;'' and (iii) the factors for considering which convictions are considered *de minimis.* 76 FR 28031 (May 13, 2011). In December of 2012, the FDIC modified the *de minimis* exception to filing by changing the amount of the maximum potential fine to qualify for *de minimis* treatment from $1,000 to $2,500. The modification also changed the limit on the amount of jail time needed to qualify for the *de minimis* exception from no jail time served to a maximum number of three days spent in jail. 77 FR 74847 (Dec 18, 2012)).

The FDIC is again proposing to amend the SOP as more fully set forth below, and seeks comments on a number of the proposed changes as set out forth Section II of this **Federal Register** Notice. The proposed changes are identified by the area of the SOP that is being considered for the revision.

When final, the revised SOP, after consideration of any comments received, will be published in the **Federal Register** and on the FDIC's website at *www.fdic.gov.*

II. Revisions to the Statement of Policy

The SOP will be revised in the following areas:

1. Introductory Section

In addition to some minor grammatical and format changes, the introductory section includes language that would allow an FDIC-supervised insured institution, in the case of a prospective employee or other person seeking to participate in the affairs of the institution, to make a conditional offer of employment to such a person, contingent on the completion of a background check satisfactory to the institution and a determination that the person is not barred by the provisions of Section 19. In such a case, the SOP makes clear that the prospective employee or person seeking to participate in the affairs of the institution will not be permitted to work at or participate in the affairs of, the institution unless the applicant's background check is completed to the satisfaction of the institution and a determination is made that the applicant's employment or participation at the institution is not barred by Section 19. Related to this change is an alteration of the language that limits the FDIC's determination whether an institution's inquiry as to whether Section 19 applies is reasonable.

The FDIC is seeking to clarify its supervisory role regarding Section 19 and seeks comments whether the use of a conditional offer of employment is a practice that is helpful to FDIC-supervised institutions in their hiring practices and in their determination whether Section 19 bars an applicant from being employed at, or participating in, the affairs of the institution.

2. A. Scope of Section 19

In addition to some minor grammatical and format changes, the FDIC is proposing to provide a more consistent view of the application of Section 19 to certain persons who are not employees, officers, directors or shareholders of an insured institution. The definition of persons covered by Section 19 includes ''institution affiliated parties'' (a term which is defined in 12 U.S.C. 1813(u) and that is broader than employees, officers, directors or shareholders). The FDIC believes that the key concern under Section 19 is whether a person participates directly or indirectly in the affairs of an insured institution, regardless of their formal relationship with the institution. Therefore, the example currently set out in the SOP regarding employees of the insured institution's holding company has been changed to be more consistent with the language of Section 19 and the definition contained in 12 U.S.C. 1813(u), to focus on the ability of employees to define and direct the management or affairs of the insured institution. Similarly, the concept of participating in the affairs of an insured institution has been added to the example of directors and officers of affiliates, subsidiaries or joint ventures to more accurately reflect the concerns of Section 19.

In addition, the inclusion of the definition of independent contractors, as contained in 12 U.S.C. 1813(u), has been deleted as unnecessary in determining whether Section 19 would apply at the time the person commenced work for, or participated in the affairs of, the insured institution.

Further, the FDIC deleted language referencing the change that expanded Section 19's application to bank and savings and loan holding companies. The language now simply notes that if a person also seeks to participate in the affairs of a bank or savings and loan holding company, they may be required to comply with any requirements of the Federal Reserve Board under 12 U.S.C. 1829(d) & (e).

The FDIC seeks comments on the consistency of the application of Section 19 to officers and directors of bank and savings and loan holding companies, affiliates, subsidiaries and joint ventures as well as independent contractors.

3. B. Standards for Determining Whether an Application is Required

In addition to some minor grammatical and format changes, the FDIC is proposing a number of changes in this section of the SOP which pertains to determining whether an application under Section 19 is required. In the introductory paragraph of this section, the FDIC has included language addressing when an application will be considered by the FDIC which states that the FDIC will not consider an application unless all of the sentencing requirements associated with the conviction, or the conditions imposed by a pretrial diversion or similar program, are completed, and the court's decision must be considered final under the procedures of the applicable jurisdiction.

The FDIC seeks comments on whether the requirement that an applicant completes the sentencing requirements of a conviction, or the conditions imposed by a program entry, and that the case is considered final are relevant

[1] 63 FR 66177 (Dec. 1, 1998).

[2] The FDIC amended the SOP by including a footnote which noted the authority of the Federal Reserve Board and the OTS with regard to bank and savings and loan holding companies under Section 19. 72 FR 73823 (Dec. 28, 2007) with correction issued at 73 FR 5270 (Jan. 29, 2008). In May of 2011, the FDIC subsequently eliminated the footnote added in December of 2007 and incorporated the change directly into the text of the SOP. It also noted the coming transfer of authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–202, § 312 (2010) (Dodd-Frank) of savings and loan holding company jurisdiction to the Federal Reserve Board.

factors to accepting an application under Section 19.

In subsection B(1) ''Convictions'', the FDIC has added additional language to address questions regarding expungements. Previously, the FDIC simply stated that an expungement was considered a complete expungement only when the conviction of record was no longer accessible even by court order. However, it is clear that in recent times, the existence of such records cannot always be completely sealed or destroyed. If the expungement is intended to be complete under the law of the jurisdiction that issues the expungement, and the jurisdiction intends that no governmental body or court can use the prior conviction or program entry for any subsequent purpose, then the SOP makes clear that the fact that the records have not been timely destroyed, or that there exist copies of the records that are not covered by the order sealing or destroying them, will not prevent the expungement from being considered complete for the purposes of Section 19.

The FDIC seeks comment on whether this interpretation would aid in determining if an expungement is complete.

In this section, the FDIC also proposes language that treats certain convictions that have been set aside or reversed after the sentencing requirements have been completed the same as pretrial diversion or similar programs are treated, unless the reason that the conviction was set aside or reversed is based on a finding on the merits that the conviction was wrongful.

Given the wide range or pretrial diversion and similar programs, the FDIC seeks comments on whether this language serves to properly include as pretrial diversion or similar programs, programs in jurisdictions that set aside or reverse convictions in a manner that, in effect, operates as a pretrial diversion or similar program.

In subsection B(2) ''Pretrial Diversion or Similar Program'', the FDIC is also clarifying that whether a program constitutes a pretrial diversion or similar program is determined by relevant Federal, state or local law, and if that program is not so designated under applicable law, then the determination will be made by the FDIC on a case-by-case basis.

The FDIC is seeking comments whether using some or all of the elements of a pretrial diversion program as cited in the SOP are appropriate for determining on a case-by-case basis whether a procedure is a similar program for the purposes of Section 19, and whether a determination that considers such elements is required under the statute.

In subsection B(3) ''Dishonesty or Breach of Trust'', the FDIC proposes language that would allow certain minor drug convictions or program entries which currently require an application to fall within the *de minimis* exceptions to filing that are set out in subsection B(5).

The FDIC seeks comments whether allowing the *de minimis* treatment for certain minor drug crimes would be beneficial.

In subsection B(4) ''Youthful Offender Adjudgments'', the FDIC has added language confirming that an adjudication under ''youthful offender'' statutes is not covered by Section 19 at all and, therefore, is not a matter covered under the *de minimis* exception to the filing requirements.

In subsection B(5) ''*De Minimis* Offenses'', the FDIC, based upon its experiences and past Section 19 applications that it has reviewed since the current SOP was adopted in 1998, has decided to create several additional conditions under which the *de minimis* exception to filing may apply, and has restructured the pertinent subsection. The subsection has been divided into two parts. The first (a) ''In General'', restates the current version of the *de minimis* exception to filing, and moves the current provision related to bad or insufficient funds checks into the second part of the subsection. The FDIC has also made one modification to the provision addressing imprisonment and/or fines. In order to clarify what the FDIC intends by the concept of jail time, the FDIC is including explanatory language which indicates that a significant restraint on a person's freedom of movement will be considered jail time. The intent is to address situations such as work release or other situations that allow a person's release to perform a specific function or functions, or a release in which a person must report continuously to a facility that is not itself a jail for some portion of the day or night.

The FDIC is seeking comments as to whether this clarification of what constitutes jail time for the purposes of the SOP is useful and levels the playing field among those who are convicted.

A second part of subsection (5), (b) ''Additional Applications of the *De Minimis* Exception to Filing'', includes an expanded version of the current provision related to bad or insufficient funds checks as well as two additional limited circumstances in which the *de minimis* exception to filing applies. The first new exception that the FDIC is proposing would create an age-based exception to the filing requirement. A person with a covered conviction or program entry that occurred when the individual was 21 or younger at the time of the conviction or program entry, who also meets the general *de minimis* exception to filing and who has completed all sentencing or program requirements, will qualify for this *de minimis* exception to filing if it least 30 months have passed prior to the date an application would otherwise be required.

A second new *de minimis* exception to filing is proposed for convictions or program entries for small-dollar theft. The exception applies if the conviction or program entry is based on a small dollar theft of goods, services, and/or currency (or other monetary instrument) and the aggregate value of the goods, services and/or currency was $500 or less at the time of the conviction or program entry. Additionally, the individual must have only one conviction or program entry under Section 19, and five years must have passed since the conviction or program entry. Simple theft for the purposes of this exception to filing does not include burglary, forgery, robbery, embezzlement, identity theft and/or fraud. Additionally, if the conviction or program entry occurred when the individual was 21 or younger, then proposal reduces the five-year period to 30 months.

The FDIC also proposes to modify the current *de minimis* exception to filing for convictions or program entries related to bad or insufficient funds checks, to cover multiple convictions or program entries for bad or insufficient funds checks, provided that the aggregate value of all the checks across all the convictions or program entries is $1,000 or less. The current requirement that there are no other convictions or program entries subject to Section 19, and that no insured financial institution or credit union was a payee on any of the checks, remains.

Lastly, the FDIC proposes to add qualifying language that no conviction for a violation of certain Title 18 provisions, as set out in 12 U.S.C. 1829(a)(2), can qualify under any of the *de minimis* exceptions to filing that are set out in subsection (5).

The FDIC is seeking comments regarding whether these expansions of the *de minimis* exceptions to filing are appropriate and reasonable, and whether individuals with the minor offenses covered in the expansion of the exceptions should be able to participate in the affairs of an insured institution without filing a Section 19 application.

4. C. Procedures

The FDIC has added language to this subsection clarifying that individual applicants file their application with the FDIC Regional Office covering the state where the person lives.

5. D. Evaluation of Section 19 Applications

The FDIC has redrafted some of the factors set forth in the SOP for considering a Section 19 application to more closely follow the provisions for considering applications set forth in the FDIC's rules at 12 CFR 308.157. Additionally, the FDIC has noted that under the provision that allows the FDIC to consider other appropriate factors, the FDIC may contact the primary Federal and/or state regulator to aid in the evaluation of an application.

The FDIC seeks comment on whether there remains a material inconsistency between the factors used in the proposed SOP and the regulation.

Additionally, in this section, the FDIC has added clarifying language that states that the utilization of the evaluation factors related to the ten-year ban provision refers to the restriction in 12 U.S.C. 1829(a)(2).

Lastly, the FDIC is proposing to add clarifying language related to bank-sponsored applications that makes clear that changes in an individual's duties at the insured institution which filed a previously approved Section 19 application on that individual's behalf will require a new application. There is also a clarification that a new application will be required if an individual covered by a previously approved bank-sponsored application desires to participate in the affairs of another insured depository institution.

The FDIC seeks comments on whether the changes to this subsection sufficiently clarify the requirement for previously approved bank-sponsored applications—first, that the bank seek additional approval of the FDIC when the duties previously approved by the FDIC change and second, that a new application must be filed when the individual covered by the previous bank sponsored application wishes to work at a different insured institution.

III. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* 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 Office of Management and Budget (OMB) control number. These modifications to the SOP for Section 19 of the FDI Act include clarification of reporting requirements in an existing FDIC information collection, entitled *Application Pursuant to Section 19 of the Federal Deposit Insurance Act* (3064–0018), that should result in a decrease in the number of applications filed. Specifically, the revised policy statement broadens the application of the *de minimis* exception to filing an application due to the minor nature of the offenses and the low risk that the covered party would pose to an insured institution based on the conviction or program entry. By modifying these provisions, the FDIC believes that there will be a reduction in the submission of applications where approval has been granted by virtue of the *de minimis* offenses exceptions to filing in the policy statement. In its last submission with OMB, the FDIC indicated that it will receive approximately 75 applications per year. The FDIC estimates that the revised SOP would reduce the number of applications filed each year by approximately 28 percent bringing the number of applications each year down to approximately 54. This change in burden will be submitted to OMB as a non-significant, nonmaterial change to an existing information collection. The estimated new burden for the information collection is as follows:

Title: ''Application Pursuant to Section 19 of the Federal Deposit Insurance Act''.

Affected Public: Insured depository institutions and individuals.

OMB Number: 3064–0018.

Estimated Number of Respondents: 54.

Frequency of Response: On occasion.

Average Time per Response: 16 hours.

Estimated Annual Burden: 864 *hours.*

Comments are invited on:

(a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

All comments will become a matter of public record. Comments may be submitted to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; by facsimile to (202) 395–5806; or by email to: *oira_submission@omb.eop.gov*, Attention, Federal Banking Agency Desk Officer. All comments should refer to the ''Application Pursuant to Section 19 of the Federal Deposit Insurance Act,'' OMB No. 3064–0018.

IV. Proposed Statement of Policy for Section 19

For the reasons set forth above, the entire text of the proposed FDIC Statement of Policy for Section 19 is stated as follows.

FDIC Statement of Policy for Section 19 of the FDI Act

Section 19 of the Federal Deposit Insurance Act (*12 U.S.C. 1829*) prohibits, without the prior written consent of the Federal Deposit Insurance Corporation (FDIC), a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial diversion or similar program (program entry) in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, owning or controlling, directly or indirectly an insured depository institution (insured institution), or otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by Section 19. It imposes a ten-year ban against the FDIC's consent for persons convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the FDIC and court approval.

Section 19 imposes a duty upon an insured institution to make a reasonable inquiry regarding an applicant's history, which consists of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or program entry for a covered offense. The FDIC believes that at a minimum, each insured institution should establish a screening process that provides the insured institution with information concerning any convictions or program entry pertaining to a job applicant. This would include, for example, the completion of a written employment application that requires a listing of all convictions and program entries. In the alternative, for the purposes of Section 19, an FDIC-supervised institution may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the institution and to determine if the applicant is barred by Section 19. In such a case, the job applicant may not work for or be employed by the insured institution until such time that the applicant is determined to not be barred under Section 19. The FDIC will look to the circumstances of each situation for FDIC-supervised institutions to determine whether the inquiry is reasonable.

Section 19 applies, by operation of law, as a statutory bar to participation absent the written consent of the FDIC. Upon notice of a conviction or program entry, an application must be filed seeking the FDIC's consent prior to the person's participation. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, a person is fit to participate in the conduct of the affairs of an insured institution without posing a risk to its safety and soundness or impairing public confidence in that institution. The burden is upon the applicant to establish that the application warrants approval.

A. Scope of Section 19

Section 19 covers institution-affiliated parties, as defined by *12 U.S.C. 1813(u)* and others who are participants in the conduct of the affairs of an insured institution. This Statement of Policy applies only to insured institutions, their institution-affiliated parties, and those participating in the affairs of an insured depository institution. Therefore, all employees of an insured institution fall within the scope of Section 19. In addition, those deemed to be *de facto* employees as determined by the FDIC based upon generally applicable standards of employment law, will also be subject to Section 19. Whether other persons who are not institution-affiliated parties are covered depends upon their degree of influence or control over the management or affairs of an insured institution. For example, Section 19 would not apply to persons who are merely employees of an insured institution's holding company, but would apply to its directors and officers to the extent that they have the power to define and direct the management or affairs of the insured institution. Similarly, directors and officers of affiliates, subsidiaries or joint ventures of an insured institution or its holding company will be covered if they participate in the affairs of the insured institution or are in a position to influence or control the management or affairs of the insured institution. Typically, an independent contractor does not have a relationship with the insured institution other than the activity for which the insured institution has contracted. In terms of participation, an independent contractor who influences or controls the management or affairs of the insured institution would be covered by Section 19. Further, ''person'' for purposes of Section 19 means an individual, and does not include a corporation, firm or other business entity.

Individuals who file an application with the FDIC under the provisions of Section 19 who also seek to participate in the affairs of a bank or savings and loan holding company may have to comply with any filing requirements of the Board of the Governors of the Federal Reserve System under 12 U.S.C. 1819(d) & (e).

Section 19 specifically prohibits a person subject to its coverage from owning or controlling an insured institution. For purposes of defining ''control'' and ''ownership'' under Section 19, the FDIC has adopted the definition of ''control'' set forth in the Change in Bank Control Act (*12 U.S.C. 1817(j)*(8)(B)). A person will be deemed to exercise ''control'' if that person has the power to vote 25 percent or more of the voting shares of an insured institution (or 10 percent of the voting shares if no other person has more shares) or the ability to direct the management or policies of the insured institution. Under the same standards, person will be deemed to ''own'' an insured institution if that person owns 25 percent or more of the insured institution's voting stock, or 10 percent of the voting shares if no other person owns more. These standards would also apply to an individual acting in concert with others so as to have such ownership or control. Absent the FDIC's consent, persons subject to the prohibitions of Section 19 will be required to divest their control or ownership of shares above the foregoing limits.

B. Standards for Determining Whether an Application Is Required

Except as indicated in paragraph (5), below, an application must be filed where there is present a conviction by a court of competent jurisdiction for a covered offense by any adult or minor treated as an adult, or where such person has entered a pretrial diversion or similar program regarding that offense. Before an application is considered by the FDIC, all of the sentencing requirements associated with a conviction or conditions imposed by the pretrial diversion, or similar program, including but not limited to, imprisonment, fines, condition of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction.

(1) Convictions. There must be present a conviction of record. Section 19 does not cover arrests, pending cases not brought to trial, acquittals, or any conviction that has been reversed on appeal. A conviction with regard to which an appeal is pending requires an application. A conviction for which a pardon has been granted will require an application. A conviction that has been completely expunged is not considered a conviction of record and will not require an application. For an expungement to be considered complete, no one, including law enforcement, can be permitted access to the record even by court order under the state or Federal law that was the basis of the expungement. Further, the jurisdiction issuing the expungement cannot permit the use of the expunged conviction in any subsequent proceeding or review of the person's character or fitness. Expungements of pretrial diversion or similar program entries will be treated the same as those for convictions. Convictions that are set aside or reversed after the applicant has completed sentencing will be treated consistent with pretrial diversions or similar programs unless the court records reflect that the underlying conviction was set aside based on a finding on the merits that such conviction was wrongful.

(2) Pretrial Diversion or Similar Program. Program entry, whether formal or informal, is characterized by a suspension or eventual dismissal of charges or criminal prosecution often

upon agreement by the accused to treatment, rehabilitation, restitution, or other noncriminal or non-punitive alternatives. Whether a program constitutes a pretrial diversion or similar program is determined by relevant Federal, state or local law, and, if not so designated under applicable law then the determination of whether it is a pretrial diversion or similar program will be made by the FDIC on a case-by-case basis. Program entries prior to November 29, 1990, are not covered by Section 19.

(3) Dishonesty or Breach of Trust. The conviction or program entry must be for a criminal offense involving dishonesty, breach of trust or money laundering. ''Dishonesty'' means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which Federal, state or local laws define as dishonest. ''Breach of trust'' means a wrongful act, use, misappropriation or omission with respect to any property or fund that has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the crime itself. All convictions or program entries for offenses concerning the illegal manufacture, sale, distribution of, or trafficking in controlled substances shall require an application unless they fall within the provisions for de minimis offenses set out in (5) below.

(4) Youthful Offender Adjudgments. An adjudgment by a court against a person as a ''youthful offender'' under any youth offender law, or any adjudgment as a ''juvenile delinquent'' by any court having jurisdiction over minors as defined by state law does not require an application. Such adjudications are not considered convictions for criminal offenses. Such adjudications do not constitute a matter covered under Section 19 and is not an offense or program entry for determining the applicability of the *de minimis* offenses exception to the filing of an application.

(5) De minimis Offenses.

(a) In General

Approval is automatically granted and an application will not be required where the covered offense is considered *de minimis,* because it meets all of the following criteria:

- There is only one conviction or program entry of record for a covered offense;
- The offense was punishable by imprisonment for a term of one year or less and/or a fine of $2,500 or less, and the individual served three (3) days or less of jail time. The FDIC considers jail time to include any significant restraint on an individual's freedom of movement which includes, as part of the restriction, confinement where the person may leave temporarily only to perform specific functions or during specified times periods or both.
- The conviction or program was entered at least five years prior to the date an application would otherwise be required; and
- The offense did not involve an insured depository institution or insured credit union.

(b) Additional Applications of the De Minimis Offenses Exception to Filing

Age at Time of Conviction or Program Entry

- A covered conviction or program entry of record that occurred when the individual was 21 years of age or younger at the time of conviction or program entry that otherwise meets the general *de minimis* criteria in (a) above, will be considered *de minimis* if the conviction or program entry was entered at least 30 months prior to the date an application would otherwise be required and all sentencing or program requirements have been met.

Convictions or Program Entries for Insufficient Funds Checks

- Convictions or program entries of record based on the writing of ''bad'' or insufficient funds check(s) shall be considered a *de minimis* offense under this provision and will not be considered as having involved an insured depository institution if the following applies:
- There is no other conviction or program entry subject to Section 19 and the aggregate total face value of all ''bad'' or insufficient funds check(s) cited across all the conviction(s) or program entry(ies) for bad or insufficient funds checks is $1,000 or less and;
- No insured depository institution or insured credit union was a payee on any of the ''bad'' or insufficient funds checks that were the basis of the conviction(s) or program entry(ies).

Convictions or Program Entries for Small-Dollar, Simple Theft

- A conviction or program entry based on a simple theft of goods, services and/or currency (or other monetary instrument) where the aggregate value of the currency, goods and/or services taken was $500 or less at the time of conviction or program entry, where the person has no other conviction or program entry under Section 19, and where it has been five years since the conviction or program entry (30 months in the case of a person 21 or younger at the time of the conviction or program entry) is considered *de minimis.* Simple theft excludes burglary, forgery, robbery, identity theft, and fraud.

Any person who meets the criteria under (5) above shall be covered by a fidelity bond to the same extent as others in similar positions, and shall disclose the presence of the conviction or program entry to all insured institutions in the affairs of which he or she intends to participate.

Further, no conviction or program entry for a violation of the Title 18 sections set out in 12 U.S.C. 1829(a)(2) can qualify under any of the *de minimis* exceptions to filing set out in 5 above.

C. Procedures

When an application is required, forms and instructions should be obtained from, and the application filed with, the appropriate FDIC Regional Director. The application must be filed by an insured institution on behalf of a person (bank-sponsored) unless the FDIC grants a waiver of that requirement (individual waiver). Such waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown. The appropriate Regional Office for an individual filing for a waiver of the institution filing requirement is the office covering the state where the person resides.

D. Evaluation of Section 19 Applications

The essential criteria in assessing an application are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured institution, and whether the affiliation, ownership, control, or participation by the person in the conduct of the affairs of the insured institution may constitute a threat to the safety and soundness of the insured institution or the interests of its depositors or threaten to impair public confidence in the insured institution. In determining the degree of risk, the FDIC will consider, in conjunction with the factors set out in 12 CFR 308.157:

(1) Whether the conviction or program entry and the specific nature and circumstances of the covered offense are a criminal offense under Section 19;

(2) Whether the participation directly or indirectly by the person in any manner in the conduct of the affairs of the insured institution constitutes a threat to the safety and soundness of the insured institution or the interests of its depositors or threatens to impair public confidence in the insured institution;

(3) Evidence of rehabilitation including the person's reputation since the conviction or program entry, the person's age at the time of conviction or program entry, and the time that has elapsed since the conviction or program entry;

(4) The position to be held or the level of participation by the person at an insured institution;

(5) The amount of influence and control the person will be able to exercise over the management or affairs of an insured institution;

(6) The ability of management of the insured institution to supervise and control the person's activities;

(7) The level of ownership the person will have of the insured institution;

(8) The applicability of the insured institution's fidelity bond coverage to the person; and

(9) Any additional factors in the specific case that appear relevant including but not limited to the opinion or position of the primary Federal and/or state regulator.

The foregoing criteria will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban under 12 U.S.C. 1829(a)(2) for certain Federal offenses, prior to its expiration date.

Some applications can be approved without an extensive review because the person will not be in a position to constitute any substantial risk to the safety and soundness of the insured institution. Persons who will occupy clerical, maintenance, service, or purely administrative positions generally fall into this category. A more detailed analysis will be performed in the case of persons who will be in a position to influence or control the management or affairs of the insured institution. All approvals and orders will be subject to the condition that the person shall be covered by a fidelity bond to the same extent as others in similar positions. In cases in which a waiver of the institution filing requirement has been granted to an individual, approval of the application will also be conditioned upon that person disclosing the presence of the conviction(s) or program entry(ies) to all insured institutions in the affairs of which he or she wishes to participate. When deemed appropriate, bank sponsored applications are to allow the person to work in a specific job at a specific bank and may also be subject to the condition that the prior consent of the FDIC will be required for any proposed significant changes in the person's duties and/or responsibilities. In the case of bank applications such proposed changes may, in the discretion of the Regional Director, require a new application. In situations in which an approval has been granted for a person to participate in the affairs of a particular insured institution and who subsequently seeks to participate at another insured depository institution, another application must be submitted.

By Order of the Board of Directors.

Dated at Washington, DC, the 19th day of December 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–28222 Filed 1–5–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, January 11, 2018 at 10:00 a.m.

PLACE: 999 E Street NW, Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: REG 2014–02: Draft Notice of Proposed Rulemaking on Independent Expenditures by Authorized Committees; Reporting Multistate Independent Expenditures and Electioneering Communications

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.

Laura E. Sinram,

Deputy Secretary of the Commission.

[FR Doc. 2018–00211 Filed 1–4–18; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 2018.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Ameris Bancorp, Moultrie, Georgia;* to merge with Atlantic Coast Financial Corporation, and thereby directly acquire shares of Atlantic Coast Bank, both of Jacksonville, Florida.

Board of Governors of the Federal Reserve System, January 2, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–00063 Filed 1–5–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 22, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Robert J. Arnold Family Living Trust, and Robert J. Arnold and Margie E. Arnold as co-trustees, all of McPherson, Kansas, and Larry G. Arnold, Castle Rock, Colorado; to retain voting shares of Ramona Bankshares, Inc. and thereby indirectly retain shares of Hillsboro State Bank, both of Hillsboro, Kansas.

Board of Governors of the Federal Reserve System, January 2, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–00064 Filed 1–5–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30Day–18–0051]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the information collection request titled Assessment of Chemical Exposures (ACE) Investigations to the Office of Management and Budget (OMB) for review and approval. ATSDR previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 30, 2017 to obtain comments from the public and affected agencies. ATSDR did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

ATSDR will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *OMB@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Assessment of Chemical Exposures (ACE) Investigations OMB Control No: 0923–0051 (Expiration Date: 03/31/2018)—Revision—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting a three-year Paperwork Reduction Act (PRA) revision of generic clearance information collection request 0923–0051 titled ''Assessment of Chemical Exposures (ACE) Investigations'' to assist state and local health departments after toxic substance spills or chemical incidents. The PRA clearance for this information collection request expires 3/31/2018. In this revision, we are renaming the form previously titled the Rapid Response Registry Form as the ACE Short Form. This revision better describes the use of the ACE Short Form in time-limited investigations where longer surveys are not possible. We do not use the form to establish registries. In addition, we are removing two insurance questions from the ACE Short Form, as they are not currently asked in the longer surveys. There are no changes to the requested burden hours.

ATSDR has successfully completed three investigations to date using this PRA clearance and would like to continue this impactful information collection. Briefly summarized below are the accomplishments of this information collection:

- During 2015, in U.S. Virgin Islands there was a methyl bromide exposure at a condominium resort. Under this ACE investigation, awareness was raised among pest control companies that methyl bromide was prohibited for use in homes and other residential settings. Additionally, awareness was raised for clinicians about the toxicologic syndrome caused by exposure to methyl bromide and the importance of notifying first responders immediately when they have encountered contaminated patients.
- During 2016, ACE team conducted a rash investigation in Flint, Michigan. Persons who were exposed to Flint municipal water and had current or worsening rashes were surveyed and referred to free dermatologist screening if desired. Findings revealed that when the city was using water from the Flint River, there were large swings in chorine, pH, and hardness, which could be one possible explanation for the eczema-related rashes.
- During 2016, ACE team also conducted a follow-up investigation for people who were exposed to the Flint municipal water and sought care from the free dermatologists. Data analysis for this project is in process and results are pending. However, the follow-up interviews resulted in improving the exam and referral processes that were still on going at the time.

The ACE investigations focus on performing rapid epidemiological assessments to assist state, regional, local, or tribal health departments (the requesting agencies) to respond to or prepare for acute chemical releases.

The main objectives for performing these rapid assessments are to:

1. Characterize exposure and acute health effects of respondents exposed to toxic substances from discrete, chemical

releases and determine their health statuses;

2. Identify needs (*i.e.* medical and basic) of those exposed during the releases to aid in planning interventions in the community;

3. Assess the impact of the incidents on health services use and share lessons learned for use in hospital, local, and state planning for chemical incidents.

Because each chemical incident is different, it is not possible to predict in advance exactly what type of and how many respondents will need to be consented and interviewed to effectively evaluate the incident. Respondents typically include, but are not limited to emergency responders such as police, fire, hazardous material technicians, emergency medical services, and personnel at hospitals where patients from the incident were treated. Incidents may occur at businesses or in the community setting; therefore, respondents may also include business owners, managers, workers, customers, community residents, pet owners, and those passing through the affected area.

Data will be collected by the multidisciplinary ACE team consisting of staff from ATSDR, the Centers for Disease Control and Prevention (CDC), and the requesting agencies. ATSDR has developed a series of draft survey forms that can be quickly tailored in the field to collect data that will meet the goals of the investigation. They will be administered based on time permitted and urgency. For example, it is preferable to administer the General Survey to as many respondents as possible. However, if there are time constraints, the shorter Household Survey or the ACE Short Form may be administered instead. The individual surveys collect information about exposure, acute health effects, health services use, medical history, needs resulting from the incident, communication during the release, health impact on children and pets, and demographic data. Hospital personnel are asked about the surge, response and communication, decontamination, and lessons learned.

Depending on the situation, data may be collected by face-to-face interviews, telephone interviews, written surveys, mailed surveys, or on-line surveys. Medical and veterinary charts may also be reviewed. In rare situations, an investigation might involve collection of clinical specimens.

ATSDR anticipates up to four ACE investigations per year. The number of participants has ranged from 30–715, averaging about 300 per year. Therefore, the total annualized estimated burden will be 591 hours per year. Participation in ACE investigations is voluntary and there are no anticipated costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Residents, first responders, business owners, employees, customers.	General Survey	800	1	30/60
	ACE Short Form	50	1	7/60
Residents	Household Survey	120	1	15/60
Hospital staff	Hospital Survey	40	1	30/60
Staff from state, local, or tribal health agencies.	Medical Chart Abstraction Form	250	1	30/60
	Veterinary Chart Abstraction Form	30	1	20/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–00141 Filed 1–5–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–17AUQ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled *Mobile Proximity Initial User Feedback* to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 6, 2017 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Mobile Proximity Initial User Feedback—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The study will be conducted by NIOSH under the Federal Mine Safety and Health Act of 1977, Public Law 91–173 as amended by Public Law 95–164. Title V, Section 501 (a) states NIOSH has the responsibility to conduct research ''to improve working conditions and practices in coal or others mines, and to prevent accidents and occupational diseases originating in the coal or other mining industry (Federal Mine and Safety and Health Act, 1977, Title V, Sec. 501).''

Striking, pinning and crushing injuries are serious concerns in underground coal mining, especially around mobile equipment. Between 2010 and 2014 powered haulage accounted for 24 of the 110 underground coal fatalities. During that same time period, the Mine Safety and Health Administration (MSHA) determined that up to nine of these fatalities were striking, pinning, or crushing accidents, which may have been prevented by proximity detection systems on coal haulage machines or scoops. Following the final rule requiring proximity detection systems on continuous mining machines, on September 2, 2015, MSHA published a proposed rule requiring proximity systems on mobile machines in underground coal mines. Though it is still under development, MSHA reported that by June of 2015, 155 of approximately 2,116 coal haulage machines and scoops had been equipped with proximity detection systems. However, in recent discussions with NIOSH personnel, some mine operators have disclosed suspending the use of proximity detection systems on mobile equipment due to challenges integrating the systems into daily operations. This has further prompted concerns about how proximity detection systems are being utilized.

The goal of this study is to reduce the risk of traumatic injuries and fatalities among mine workers through assessing the current state of proximity systems for underground mobile equipment. NIOSH is seeking a one-year OMB approval in order to collect information to address two key questions: (1) In which situations do proximity detection systems on mobile haulage hinder normal operation? (2) In which situations do proximity detection systems on mobile haulage endanger miners? Data will be used to inform the development of technologies, engineering controls, administrative controls, best practices, and training approaches that eliminate striking fatalities and injuries caused by mobile mining equipment.

The study population includes mine workers in various maintenance and production roles that work in underground coal mines in the United States. Total annual time burden for this study is 45 hours, including recruitment of mines and 250 semi-formal interviews. Since workers will continue to perform their assigned duties during the optional group observations, a burden estimate was not calculated for this activity.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Mine Operators	Mine Recruitment Scripts	12	1	15/60
Crew members	Interview Protocol	250	1	10/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–00140 Filed 1–5–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–1061]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Behavioral Risk Factor Surveillance System (BRFSS) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 16, 2017 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Behavioral Risk Factor Surveillance System (BRFSS) (OMB Control Number 0920–1061, Expiration Date 3/31/

2018)—Revision—National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting Office of Management and Budget (OMB) approval to continue information collection for the Behavioral Risk Factor Surveillance System (BRFSS) for the period of 2018–2021. The BRFSS is a nationwide system of cross-sectional telephone health surveys administered by health departments in states, territories, and the District of Columbia (collectively referred to here as states) in collaboration with CDC.

The BRFSS produces state-level information primarily on health risk behaviors, health conditions, and preventive health practices that are associated with chronic diseases, infectious diseases, and injury. Designed to meet the data needs of individual states and territories, the CDC sponsors the BRFSS information collection project under a cooperative agreement with states and territories. Under this partnership, BRFSS state coordinators determine questionnaire content with technical and methodological assistance provided by CDC. For most states and territories, the BRFSS provides the only sources of data amenable to state and local level health and health risk indicator uses. Over time, it has also developed into an important data collection system that federal agencies rely on for state and local health information and to track national health objectives such as Healthy People.

CDC bases the BRFSS questionnaire on modular design principles to accommodate a variety of state-specific needs within a common framework. All participating states are required to administer a standardized core questionnaire, which provides a set of shared health indicators for all BRFSS partners. The BRFSS core questionnaire consists of fixed core, rotating core, and emerging core questions. Fixed core questions are asked every year. Rotating core questions cycle on and off the core questionnaire during even or odd years, depending on the question. Emerging core questions are included in the core questionnaire as needed to collect data on urgent or emerging health topics such as influenza.

In addition, the BRFSS includes a series of optional modules on a variety of topics. In off years, when the rotating questions are not included in the core questionnaire, they are offered to states as an optional module. This framework allows each state to produce a customized BRFSS survey by appending selected optional modules to the core survey. States may select which, if any, optional modules to administer. As needed, CDC provides technical and methodological assistance to state BRFSS coordinators in the construction of their state-specific surveys. The CDC and BRFSS partners produce a new set of state-specific BRFSS questionnaires each calendar year (*i.e.,* 2016 BRFSS questionnaires, 2017 BRFSS questionnaires, etc.). CDC submits an annual Change Request to OMB that outlines updates to the BRFSS core survey and optional modules that have occurred since the previous year. Each state administers its BRFSS questionnaire throughout the calendar year.

The current estimated average burden for the core BRFSS interview is 15 minutes. For the optional modules, the estimated average burden per response varies by state and year, but is currently estimated at an additional 15 minutes. Finally, the BRFSS allows states to customize some portions of the questionnaire through the addition of state-added questions, which CDC does not review nor approve. State-added questions are not included in CDC's burden estimates.

CDC periodically updates the BRFSS core survey and optional modules as new modules or adopt emerging core questions. The purpose of this Revision request is to extend the information collection period for three years and to incorporate field-testing into the approved information collection plan.

Field-testing is the final check of changes in the questionnaire, which have occurred in the preceding year. Researchers conduct field-testing in a manner that mimics the full-scale project protocol, to the degree that is feasible. Field-testing allows for necessary changes in data collection methods and data collection software. Researchers use field tests to identify problems with instrument documentation or instructions, problems with conditional logic (*e.g.,* skip patterns), software errors or other implementation and usability issues. Researchers conduct field-testing with all new modules, emerging core questions, sections, which precede and/or follow any new or changed items and extant sections, which are topically related. Researchers also conduct this testing to identify redundant and overlapping questions. Extant sections of the questionnaire unrelated to new items do not require testing. The demographic questions on the core BRFSS survey are included on each field test. CDC will submit change requests to OMB annually to gain approval to implement modifications identified in field tests. Researchers typically conduct field tests in a single state with appropriate computer-assisted telephone interview (CATI) capability. Individuals who participate in field testing are drawn from a different sample than individuals who participate in the BRFSS surveys. Participation is voluntary and there is no cost to participate. The average time burden per response will be 22 minutes. The total time burden across all respondents will be approximately 241,519 hours.

The public comment received to date requested that BRFSS be modified to include more questions about tobacco use, including use of newer nicotine-delivery devices. Because BRFSS follows the design and development process described above, CDC cannot unilaterally change the topical content of BRFSS and no change has been made to the 2018 questionnaire.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
U.S. General Population	Landline Screener	375,000	1	1/60
	Cell Phone Screener	292,682	1	1/60
	Field Test Screener	900	1	1/60
Annual Survey Respondents (Adults >18 Years).	BRFSS Core Survey	480,000	1	15/60
	BRFSS Optional Modules	440,000	1	15/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Field Test Respondents (Adults >18 Years) ..	Field Test Survey	500	1	45/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–00142 Filed 1–5–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2018–0001]

CDC Sex-Specific Body Mass Index (BMI)-For-Age Growth Charts

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain public comment on the production of sex-specific body mass index (BMI)-for-age growth charts for children and adolescents aged 2–19 years specifically designed for tracking extremely high values of BMI. The 2000 CDC growth charts include sex-specific BMI-for-age percentile charts based on data representative of the United States (US) population from the National Health Examination Survey (NHES) and National Health and Nutrition Examination Survey (NHANES). In US children and adolescents, obesity is defined as at or above the sex-specific 95th percentile on the CDC BMI-for-age growth charts. Severe obesity is often defined as at or above 120% of the sex-specific 95th percentile on the CDC BMI–for-age growth charts. Currently, the highest percentile displayed is the 97th percentile. Therefore, it is difficult to assess changes in weight status in children with very high BMIs that exceed this level. The new charts will provide additional lines representing 120%, 130%, 140%, and 150% of the 95th percentile. The intent of these charts is to provide a mechanism for documenting BMI percentiles for children and adolescents with severe obesity in both clinical and research settings.

DATES: Written comments must be received on or before March 9, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0001 by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail*: Verita C. Buie, DrPH, Office of Planning, Budget, and Legislation, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, MS–08, Hyattsville, MD 20782.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cynthia Ogden, Ph.D., Division of Health and Nutrition Examination Survey, National Center for Health Statistics, 3311 Toledo Road, MS–P08, Hyattsville, MD 20782–2064, phone: (301) 458–4405.

SUPPLEMENTARY INFORMATION: The National Center for Health Statistics (NCHS) is congressionally mandated by the National Health Survey Act of 1956 to monitor the health of the nation. The National Health and Nutrition Examination Survey (NHANES), part of NCHS, is a nationally representative health survey designed to assess the health and nutritional status of adults and children in the United States. The survey is unique in that it combines interviews with physical examinations and laboratory studies. NHANES data are used throughout Department of Health and Human Services (HHS) agencies in addition to public health researchers world-wide. NHANES data have been used to determine national obesity estimates, produce pediatric growth and BMI charts, and monitor prevalence of infectious diseases such as the human papillomavirus (HPV).

Body mass index (BMI) is calculated as weight in kilograms divided by height in meters squared and is used in the diagnosis, clinical management, and estimation of population prevalence of obesity and severe obesity. Among adults, obesity is defined by an absolute BMI value (≥30). Among children, BMI varies with age as well as sex. Therefore, to classify obesity among children and adolescents aged 2–19 years, measurements are standardized by age and sex using BMI-for-age growth charts. The 2000 CDC growth charts include smoothed percentiles of BMI-for-age based on data representative of the US population. In the US, obesity is defined as at or above the sex-specific 95th percentile for BMI-for-age. However, categorizing severe obesity (defined in adults as BMI≥40) is problematic given specific measures are not available in standard CDC growth charts for values beyond the 97th percentile. Researchers have proposed using percent of the 95th percentile as a flexible, stable measure for extreme BMI values. Consequently, severe obesity in children is often defined as a BMI at or above 120% of the sex-specific 95th percentile of BMI-for-age.

Prevalence of severe obesity has increased among children and adolescents and very high BMI has been shown to increase risk for obesity in adulthood in addition to adverse health outcomes such as diabetes, abnormal cholesterol levels, and high blood pressure and behavioral health and social victimization impacts. Recent research has focused on effective management and treatment of children and adolescents with severe obesity, but researchers and clinicians lack a tool to determine BMI percentiles for these individuals. Specialized growth charts with lines reflecting 120%, 130%, 140% and 150% will provide an improved tool for documenting BMI in the clinical and research settings. Please see the draft example chart for boys (Attachment 1) and girls (Attachment 2).

Date: January 2, 2018.

Lauren Hoffmann,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2018–00060 Filed 1–5–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10401]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 9, 2018.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs Division of Regulations Development; *Attention:* Document Identifier/OMB Control Number ______, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10401 Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment

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. The term ''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 requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a previously approved collection; *Title of Information Collection:* Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment; *Use:* The data collection and reporting requirements described below will be used by HHS to run the permanent risk adjustment program, including validation of data submitted by issuers, on behalf of States that requested HHS to run it for them. Risk adjustment is one of three (3) market stability programs established by the Patient Protection and Affordable Care Act and is intended to mitigate the impact of adverse selection in the individual and small group health insurance markets inside and outside of the Health Insurance Exchanges. HHS will also use this data to adjust the payment transfer formula for risk associated with high-cost enrollees. State regulators can use the reporting requirements outlined in this collection to request a reduction to the statewide average premium factor of the risk adjustment transfer formula, beginning for the 2019 benefit year, and thereby avoid having to establish their own programs. Issuers and providers can use the alternative reporting requirements for mental and behavioral health records described herein to comply with State privacy laws. *Form Number:* CMS–10401 (OMB control number: 0938–1155); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 700; *Total Annual Responses:* 11,700,000,287; Total Annual Hours: 5,828,037. (For policy questions regarding this collection contact Ernest Ayukawa at 410–492–5213.)

Dated: January 2, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–00086 Filed 1–5–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0231]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Adverse Experience Reporting for Licensed Biological Products; and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) 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 February 7, 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 0910–0308. Also include the FDA docket number found in brackets in the heading of this document.

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: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Experience Reporting For Licensed Biological Products; and General Records—21 CFR Part 600; OMB Control Number 0910–0308—Extension

Under the Public Health Service Act (42 U.S.C. 262), FDA may only approve a biologics license application for a biological product that is safe, pure, and potent. When a biological product is approved and enters the market, the product is introduced to a larger patient population in settings different from clinical trials. New information generated during the postmarketing period offers further insight into the benefits and risks of the product, and evaluation of this information is important to ensure its safe use. FDA issued the Adverse Experience Reporting (AER) requirements in part 600 (21 CFR part 600) to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's AERS is to identify potentially serious safety problems with licensed biological products. Although premarket testing discloses a general safety profile of a biological product's comparatively common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. In addition, production and/or distribution problems have contaminated biological products in the past. AER reports are obtained from a variety of sources, including manufacturers, patients, physicians, foreign regulatory agencies, and clinical investigators. Identification of new and unexpected safety issues through the analysis of the data in AERS contributes directly to increased public health protection. For example, evaluation of these safety issues enables FDA to take focused regulatory action. Such action may include, but is not limited to, important changes to the product's labeling (such as adding a new warning), coordination with manufacturers to ensure adequate corrective action is taken, and removal of a biological product from the market when necessary.

Section 600.80(c)(1) requires licensed manufacturers or any person whose name appears on the label of a licensed biological product to report each adverse experience that is both serious and unexpected, whether foreign or domestic, as soon as possible but in no case later than 15 calendar days of initial receipt of the information by the licensed manufacturer. These reports are known as postmarketing 15-day Alert reports. This section also requires licensed manufacturers to submit any followup reports within 15 calendar days of receipt of new information or as requested by FDA, and if additional information is not obtainable, to maintain records of the unsuccessful steps taken to seek additional information. In addition, this section requires that a person who submits an adverse action report to the licensed manufacturer rather than to FDA, maintain a record of this action. Section 600.80(e) requires licensed manufacturers to submit a 15-day Alert report for an adverse experience obtained from a postmarketing clinical study only if the licensed manufacturer concludes that there is a reasonable possibility that the product caused the adverse experience. Section 600.80(c)(2) requires licensed manufacturers to report each adverse experience not reported in a postmarketing 15-day Alert report at quarterly intervals, for 3 years from the date of issuance of the biologics license, and then at annual intervals. The majority of these periodic reports are submitted annually, since a large percentage of currently licensed biological products have been licensed longer than 3 years. Section 600.80(k) requires licensed manufacturers to maintain for a period of 10 years records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 requires licensed manufacturers to submit, at an interval of every 6 months, information about the quantity of the product distributed under the biologics license, including the quantity distributed to distributors. These distribution reports provide FDA with important information about products distributed under biologics licenses, including the quantity, certain lot numbers, labeled date of expiration, the fill lot numbers for the total number of dosage units of each strength or potency distributed (*e.g.,* 50,000 per 10-milliliter vials), and date of release. FDA may require the licensed manufacturer to submit distribution reports under this section at times other than every 6 months. Under § 600.82(a), an applicant of a biological product or blood and blood component must notify FDA of a permanent discontinuance of manufacture or an interruption in manufacturing or disruption in supply, as applicable. Under §§ 600.80(h)(2) and 600.81(b)(2), a licensed manufacturer may request a temporary waiver for the requirements under § 600.80(h)(1) and (b)(1), respectively. Requests for waivers must be submitted in accordance with § 600.90. Under § 600.90, a licensed manufacturer may submit a waiver request for any requirements that apply to the licensed manufacturer under §§ 600.80 and 600.81. A waiver request submitted under § 600.90 must include supporting documentation.

Manufacturers of biological products for human use must keep records of each step in the manufacture and distribution of a product, including any recalls. These recordkeeping requirements serve preventative and remedial purposes by establishing accountability and traceability in the manufacture and distribution of products. These requirements also enable FDA to perform meaningful inspections. Section 600.12 requires, among other things, that records be made concurrently with the performance of each step in the manufacture and distribution of products. These records must be retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, under § 600.12, manufacturers must maintain records relating to the sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing responsibility with respect to a product. Under § 600.12(b)(2), manufacturers are also required to maintain complete records pertaining to the recall from distribution of any product. Furthermore, § 610.18(b) (21 CFR 610.18(b)) requires, in part, that the results of all periodic tests for verification of cultures and determination of freedom from extraneous organisms be recorded and retained. The recordkeeping requirements for §§ 610.12(g), 610.13(a)(2), 610.18(d), 21 CFR 680.2(f), and 680.3(f) are approved under OMB control number 0910–0139.

Respondents to this collection of information include manufacturers of biological products (including blood and blood components) and any person whose name appears on the label of a licensed biological product. In table 1, the number of respondents is based on the estimated number of manufacturers that are subject to those regulations or that submitted the required information to the Center for Biologics Evaluation and Research and Center for Drugs Evaluation and Research, FDA, in fiscal year (FY) 2016. Based on information obtained from the FDA's database system, there were 93 manufacturers of biological products. This number excludes those manufacturers who produce Whole Blood, components of Whole Blood, or in-vitro diagnostic licensed products, because of the exemption under § 600.80(m). The total annual responses are based on the number of submissions received by FDA in FY 2016. There were an estimated 125,371 15-day Alert reports, 180,580 periodic reports, and 677 lot distribution reports submitted to FDA. The number of 15-day Alert reports for postmarketing studies under § 600.80(e) is included in the total number of 15-day Alert reports. FDA received 81 requests from 40 manufacturers for waivers under § 600.90 (including §§ 600.80(h)(2) and 600.81(b)(2)), of which 79 were granted. The hours per response are based on FDA experience. The burden hours required to complete the MedWatch Form (Form FDA 3500A) for § 600.80(c)(1), (e), and (f) are reported under OMB control number 0910–0291.

In the **Federal Register** of July 18, 2017 (82 FR 32836), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
600.80(c)(1), 600.80(d), and 600.80(e); postmarketing 15-day Alert reports	93	1,348.07	125,371	1	125,371
600.82; notification of discontinuance or interruption in manufacturing	18	1.61	29	2	58
600.80(c)(2); periodic adverse experience reports	93	1,941.72	180,580	28	5,056,240
600.81 Distribution Reports	93	7.28	677	1	677
600.80(h)(2), 600.81(b)(2), and 600.90; waiver requests	40	2.03	81	1	81
Total					5,182,427

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In table 2 the number of respondents is based on the number of manufacturers subject to those regulations. Based on information obtained from FDA's database system, there were 263 licensed manufacturers of biological products in FY 2016. However, the number of recordkeepers listed for § 600.12(a) through (e) excluding (b)(2) is estimated to be 114. This number excludes manufacturers of blood and blood components because their burden hours for recordkeeping have been reported under § 606.160 in OMB control number 0910–0116. The total annual records is based on the annual average of lots released in FY 2016 (7,198), number of recalls made (575), and total number of adverse experience reports received (305,951) in FY 2016. The hours per record are based on FDA experience.

FDA estimates the burden of this recordkeeping as follows:

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper (in hours)	Total hours
600.12 [2]; maintenance of records	114	63.14	7,198	32	230,336
600.12(b)(2); recall records	263	2.19	575	24	13,800
600.80(c)(1) and 600.80(k)	93	3,289.79	305,951	1	305,951
Total					550,087

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The recordkeeping requirements in § 610.18(b) are included in the estimate for § 600.12.

The burden for this information collection has changed since the last OMB approval. Because of an increase in the number of AER reports we have received during the past 3years, we have increased our reporting and recordkeeping burden estimates.

Dated: January 2, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–00095 Filed 1–5–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of request for nominations for voting members.

SUMMARY: HRSA is requesting nominations to fill vacancies on the National Advisory Council on Migrant Health (NACMH). The NACMH is authorized and governed under the Public Health Service (PHS) Act, as amended.

DATES: The agency will receive nominations on a continuous basis.

ADDRESSES: All nominations must be submitted in hardcopy to the Designated Federal Official (DFO), NACMH, Strategic Initiatives and Planning Division, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 16N38B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: All requests for information regarding the NACMH nominations should be sent to Esther Paul, DFO, NACMH, HRSA, in one of three ways: (1) Send a request to the following address: Esther Paul, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, 16N38B, Rockville, Maryland 20857; (2) call (301) 594–4300; or (3) send an email to *epaul@hrsa.gov.*

SUPPLEMENTARY INFORMATION: As authorized under section 217 of the PHS Act, as amended (42 U.S.C. 218), the Secretary established the NACMH. The NACMH is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

The NACMH consults with and makes recommendations to the HHS Secretary and the HRSA Administrator concerning the organization, operation, selection, and funding of migrant health centers and other entities under grants and contracts under section 330 of the PHS Act (42 U.S.C. 254b).

The authorizing statute and the NACMH Charter require that the Council consist of 15 members, each serving a 4-year term. Twelve Council members are required by statute to be governing board members of migrant health centers or other entities assisted under section 254b of the PHS Act. Of these 12, at least nine must be patient members of health center governing boards who are familiar with the delivery of health care to migratory and seasonal agricultural workers. The remaining three Council members must be individuals qualified by training and experience in the medical sciences or in the administration of health programs. New members filling a vacancy that occurred prior to expiration of a term may serve only for the remainder of such term.

Compensation: Members who are not full-time federal employees shall be paid at the rate of $200 per day, including travel time plus per diem and travel expenses in accordance with Standard Government Travel Regulations.

Specifically, HRSA is requesting nominations for:

Governing Board Members (8 Vacancies)

Nominees *must be members* of a governing board of a migrant health center or other entity assisted under section 330 of the PHS Act. Of the eight board member vacancies, five nominees *must also be patients* of the entities they represent. (The Council has four current board members who are patients.) Additionally, board member nominees *must be familiar* with the delivery of primary health care to migratory and seasonal agricultural workers and their families.

A complete nomination package should include the following information for each nominee: (1) A NACMH nomination form; (2) three letters of reference; (3) a statement of prior service on the NACMH; and (4) a biographical sketch of the nominee or a copy of his/her curriculum vitae. The nomination package must also state that the nominee is willing to serve as a member of the NACMH and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee. Please contact Esther Paul at *epaul@hrsa.gov* and/or Carole Chamberlain at *cchamberlain@hrsa.gov* to obtain a nomination form.

HHS strives to ensure that the membership of HHS federal advisory committees is balanced in terms of points of view represented, consistent with the committee's authorizing statute and charter. Appointment to the NACMH shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. The Department encourages nominations of qualified candidates from all groups and locations.

Amy McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–00096 Filed 1–5–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Peter Tung, 240–669–5483; *peter.tung@nih.gov.* Licensing information and copies of the patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD, 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Compositions and Methods for Blocking Transmission of Plasmodium

Description of Technology: According to the World Health Organization, about 3.2 billion people—nearly half of the world's population—are at risk of infection by *Plasmodium* parasites, resulting in malaria. An estimated 214 million cases and 438,000 deaths were due to malaria in 2015.

P47 protein expressed by *Plasmodium* species allow malaria parasites to evade the mosquito immune system, thereby facilitating the transmission of malaria parasites. NIAID inventors have discovered the region of P47 protein responsible for the immune evasion function of this protein. Specific sequences of protein fragments of P47 have proven to be both highly antigenic and shown to be responsible in allowing malaria parasites to evade the mosquito immune system. Proof of concept in a mouse model has demonstrated that vaccination using specific P47 protein fragments blocks *Plasmodium* transmission by mosquitoes.

Immunization with the P47 protein variants of this technology provides a candidate for a potential, effective, transmission blocking malaria vaccine against *Plasmodium* species.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Transmission blocking malaria vaccine

Competitive Advantages:

- Transmission blocking of *Plasmodium*
- Transmission blocking activity based on recruiting the mosquito immune system to kill *Plasmodium* parasites by blocking *Plasmodium* immune evasion

Development Stage:

- Early-stage
- In vitro data available
- In vivo data available (animal)

Inventors: Carolina Veronica Barillas-Mury, Alvaro Molina-Cruz, Gaspar Exequiel Canepa, all of NIAID.

Publications:

Intellectual Property: HHS Reference No. E–294–2016/0—U.S. Provisional Application No. 62/463,011, filed February 24, 2017.

Licensing Contact: Peter Tung, 240–669–5483; *peter.tung@nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize P47 protein fragments as a transmission blocking vaccine. For collaboration opportunities, please contact Peter Tung at 240–669–5483; *peter.tung@nih.gov.*

Dated: December 13, 2017.

Suzanne Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–00121 Filed 1–5–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Coordinating Committee on the Validation of Alternative Methods Communities of Practice Webinar on Machine Learning in Toxicology: Fundamentals of Application and Interpretation; Notice of Public Webinar; Registration Information

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) announces a public webinar ''Machine Learning in Toxicology: Fundamentals of Application and Interpretation.'' The webinar is organized on behalf of ICCVAM by the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). Interested persons may participate via WebEx. Time will be allotted for questions from the audience.

DATES: Webinar: January 23, 2018, 1:00 p.m. to approximately 2:30 p.m. Eastern Standard Time (EST). Registration for the Webinar: December 18, 2017, until 2:30 p.m. on January 23, 2018.

ADDRESSES: Webinar web page: *http://ntp.niehs.nih.gov/go/commprac-2018.*

FOR FURTHER INFORMATION CONTACT: Dr. Warren Casey, Director, NICEATM; telephone: (984) 287–3118; email: *warren.casey@nih.gov.*

SUPPLEMENTARY INFORMATION:

Background: ICCVAM promotes the development and validation of toxicity testing methods that protect human health and the environment while replacing, reducing, or refining animal use. ICCVAM also provides guidance to test method developers and facilitates collaborations that promote the development of new test methods. To address these goals, ICCVAM will hold a Communities of Practice webinar on ''Machine Learning in Toxicology: Fundamentals of Application and Interpretation.''

The ICCVAM webinar will explore the fundamentals of machine learning approaches, including how they work, how they are interpreted, and precautions that should be taken when evaluating their output. It will feature presentations by two experts in use of machine learning in toxicity texting applications that will address issues specific to use of machine learning approaches in a regulatory context. Case studies will be presented to highlight where such techniques have been successfully applied both nationally and internationally. The preliminary agenda and additional information about presentations will be posted at *http://ntp.niehs.nih.gov/go/commprac-2018* as available.

Webinar and Registration: This webinar is open to the public with time scheduled for questions by participants following each presentation. Registration for the webinar is required and is open through 2:30 p.m. on January 23, 2018. Registration is available at *http://ntp.niehs.nih.gov/go/commprac-2018.* Interested individuals are encouraged to visit this web page to stay abreast of the most current webinar information. Registrants will receive instructions on how to access and participate in the webinar in an email sent shortly before the webinar.

Individuals with disabilities who need accommodation to participate in this event should contact Elizabeth Maull at phone: (984) 287–3157 or email: *maull@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at (800) 877–8339. Requests should be made at least five business days in advance of the event.

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 16 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability and promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of the National Institute of Environmental Health Sciences and provides the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. ICCVAM acts to ensure that new and revised test methods are validated to meet the needs of federal agencies, increase the efficiency and effectiveness of federal agency test method review, and optimize utilization of scientific expertise outside the federal government. Additional information about ICCVAM can be found at *http://ntp.niehs.nih.gov/go/iccvam.*

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts and publishes analyses and evaluations of data from new, revised, and alternative testing approaches. NICEATM and ICCVAM work collaboratively to evaluate new and improved testing approaches applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM can be found at *http://ntp.niehs.nih.gov/go/niceatm.*

Dated: December 20, 2017.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2018–00120 Filed 1–5–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0007]

Agency Information Collection Activities: Application for Allowance in Duties

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than March 9, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0007 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Allowance in Duties.

OMB Number: 1651–0007.

Form Number: CBP Form 4315.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to Form 4315.

Type of Review: Extension (without change).

Abstract: CBP Form 4315, ''Application for Allowance in Duties,'' is submitted to CBP in instances of claims of damaged or defective imported merchandise on which an allowance in duty is made in the liquidation of the entry. The information on this form is used to substantiate an importer's claim for such duty allowances. CBP Form 4315 is authorized by 19 U.S.C. 1506 and provided for by 19 CFR 158.11, 158.13 and 158.23. This form is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%204315_0.pdf.*

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Total Annual Responses: 12,000.

Estimated Time per Response: 8 minutes.

Estimated Annual Burden Hours: 1,600.

Dated: January 2, 2018.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–00071 Filed 1–5–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0127]

Agency Information Collection Activities: Guarantee of Payment

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than March 9, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0127 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Guarantee of Payment.

OMB Number: 1651–0127.

Form Number: Form I–510.

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form I–510.

Type of Review: Extension (without change).

Abstract: Section 253 of the Immigration and Nationality Act (INA) requires that an alien crewman found to be or suspected of being afflicted with any of the diseases named in section 255 of the INA shall be placed in a hospital for treatment and/or observation with the expense of such observation and/or treatment being borne by the carrier. The guarantee of payment for medical and other related expenses required by section 253 of the Act shall be executed by the owner, agent, consignee, commanding officer or master of the vessel or aircraft on CBP Form I–510, *Guarantee of Payment.* No vessel or aircraft can be granted clearance until such expenses are paid or their payment appropriately guaranteed. CBP Form I–510 collects information such as the name of the owner, agent, commander officer or master of the vessel or aircraft; the name of the crewman; the port of arrival; and signature of the guarantor. This form is provided for by 8 CFR 253.1 and is accessible at: *http://www.cbp.gov/newsroom/publications/forms?title=I-510.*

Affected Public: Businesses.

Estimated Number of Respondents: 100.

Estimated Total Annual Responses: 100.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8.

Dated: January 2, 2018.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–00066 Filed 1–5–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0020]

Agency Information Collection Activities: Crew's Effects Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than March 9, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0020 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other

Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Crew's Effects Declaration.

OMB Number: 1651–0020.

Form Number: Form 1304.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 1304.

Type of Review: Extension (without change).

Abstract: CBP Form 1304, *Crew's Effects Declaration,* was developed through an agreement by the United Nations' Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. The form is used as part of the entrance and clearance of vessels pursuant to the provisions of 19 CFR 4.7 and 4.7a, 19 U.S.C. 1431, and 19 U.S.C. 1434. CBP Form 1304 is completed by the master of the arriving carrier to record and list the crew's effects that are onboard the vessel. This form is accessible at *https://www.cbp.gov/newsroom/publications/forms?title=1304.*

Affected Public: Businesses.

Estimated Number of Respondents: 9,000.

Estimated Number of Total Annual Responses: 206,100.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 206,100.

Dated: January 2, 2018.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–00072 Filed 1–5–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0100]

Agency Information Collection Activities: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than March 9, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0100 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred.

OMB Number: 1651–0100.

Form Number: CBP Form 4609.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Abstract: CBP Form 4609, Petition for Remission or Mitigation of Forfeitures and Penalties Incurred, is completed and filed with the CBP FP&F Officer designated in the notice of claim by individuals who have been found to be in violation of one or more provisions of the Tariff Act of 1930, or other laws administered by CBP. Persons who violate the Tariff Act are entitled to file a petition seeking mitigation of any statutory penalty imposed or remission of a statutory forfeiture incurred. This petition is submitted on CBP Form 4609. The information provided on this form is used by CBP personnel as a basis for granting relief from forfeiture or penalty. CBP Form 4609 is authorized by 19 U.S.C. 1618 and provided for by 19 CFR 171.1. It is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=4609*.

Affected Public: Businesses.

Estimated Number of Respondents: 1,610.

Estimated Number of Total Annual Responses: 1,610.

Estimated Time per Response: 14 minutes.

Estimated Annual Burden Hours: 376.

Dated: January 2, 2018.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–00067 Filed 1–5–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0021]

Agency Information Collection Activities: Crew Member's Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than March 9, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0021 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Crew Member's Declaration.

OMB Number: 1651–0021.

Form Number: CBP Form 5129.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 5129.

Type of Review: Extension (without change).

Abstract: CBP Form 5129, *Crew Member's Declaration,* is a declaration made by crew members listing all goods acquired abroad which are in his/her possession at the time of arrival in the United States. The data collected on CBP Form 5129 is used for compliance with currency reporting requirements, supplemental immigration documentation, agricultural quarantine matters, and the importation of merchandise by crew members who complete the individual declaration. This form is authorized by 19 U.S.C. 1431 and provided for by 19 CFR 4.7, 4.81, 122.44, 122.46, 122.83, 122.84 and 148.61–148.67. CBP Form 5129 is accessible at *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%205129.pdf.*

Affected Public: Businesses.

Estimated Number of Respondents: 6,000,000.

Estimated Number of Total Annual Responses: 6,000,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 996,000.

Dated: January 2, 2018.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–00068 Filed 1–5–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0011]

Agency Information Collection Activities: Declaration for Free Entry of Returned American Products

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than February 7, 2018) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (82 FR 48839) on October 20, 2017, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration for Free Entry of Returned American Products.

OMB Number: 1651–0011.

Form Number: CBP Form 3311.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected on Form 3311.

Type of Review: Extension (with no change).

Abstract: CBP Form 3311, *Declaration for Free Entry of Returned American Products,* is used by importers and their agents when duty-free entry is claimed for a shipment of returned American products under the Harmonized Tariff Schedule of the United States. This form serves as a declaration that the goods are American made and that they have not been advanced in value or improved in condition while abroad; were not previously entered under a temporary importation under bond provision; and that drawback was never claimed and/or paid. CBP Form 3311 is authorized by 19 CFR 10.1, 10.66, 10.67, 12.41, 123.4, and 143.23 and is accessible at: *http://www.cbp.gov/newsroom/publications/forms?title=3311&=Apply.*

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Responses per Respondent: 35.

Estimated Number of Total Annual Responses: 420,000.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 42,000.

Dated: January 2, 2018.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–00069 Filed 1–5–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0008]

Agency Information Collection Activities: Application for Identification Card

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than February 7, 2018) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (82 FR 48840) on October 20, 2017, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Identification Card.

OMB Number: 1651–0008.

Form Number: CBP Form 3078.

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form 3078.

Type of Review: Extension (without change).

Abstract: CBP Form 3078, *Application for Identification Card,* is filled out in order to obtain an Identification Card which is used to gain access to CBP security areas. This form collects biographical information and is usually completed by licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. This form is submitted to the local CBP office at the port of entry that the respondent will be requesting access to the Federal Inspection Section. Form 3078 is authorized by 19 U.S.C. 66, 1551, 1555, 1565, 1624, 1641; and 19 CFR 112.42, 118, 122.182, and 146.6. This form is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%203078.pdf.*

Affected Public: Businesses.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 42,450.

Dated: January 2, 2018.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–00070 Filed 1–5–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[BOEM–2017–0074; MMAA104000]

Notice of Availability of the 2019–2024 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program and Notice of Intent To Prepare a Programmatic Environmental Impact Statement

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice; request for comments.

SUMMARY: BOEM is announcing the availability of, and requests comments on, the Draft Proposed Program (DPP) for the 2019–2024 Outer Continental Shelf Oil and Gas Leasing Program (2019–2024 Program or Program). BOEM is also announcing its decision to prepare a Programmatic Environmental Impact Statement for the 2019–2024 Program (Programmatic EIS) and the initiation of the formal scoping process.

DATES: Comments should be submitted by March 9, 2018 to the address specified in the **ADDRESSES** section of this notice. Dates of public meetings to be held between now and March 9, 2018, will be posted on *https://www.BOEM.gov/National-OCS-Program.*

ADDRESSES: Comments on the DPP or Programmatic EIS may be submitted in one of the following ways:

1. Mailed in an envelope labeled ''Comments for the 2019–2024 Draft Proposed National Oil and Gas Leasing Program'' and mailed (or hand delivered) to Ms. Kelly Hammerle, Chief, National Oil and Gas Leasing Program Development and Coordination Branch, Leasing Division, Office of Strategic Resources, Bureau of Ocean Energy Management (VAM–LD), 45600 Woodland Road, Sterling, VA 20166–9216, telephone (703) 787–1613. Written comments may also be hand delivered at a public meeting to the BOEM official in charge.

2. Through the *Regulations.gov* web portal: Navigate to *http://www.regulations.gov* and under the Search tab, in the space provided, type in Docket ID: BOEM–2017–0074 to submit comments and to view other comments already submitted. Information on using *www.regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the links under the box entitled ''Are you new to this site?''

FOR FURTHER INFORMATION CONTACT: For information on the 2019–2024 Program process or BOEM's policies associated with this notice, please contact Ms. Kelly Hammerle, Chief, National Oil and Gas Leasing Program Development and Coordination Branch at (703) 787–1613. For information on the 2019–2024 Programmatic EIS, submission of comments related to potential environmental impacts, or Cooperating Agency status, please contact Dr. Jill Lewandowski, Chief, Division of Environmental Assessment, at (703) 787–1703.

SUPPLEMENTARY INFORMATION: On April 28, 2017, Presidential Executive Order 13795: Implementing an America First Offshore Energy Strategy (E.O. 13795), directed the Secretary of the Interior (Secretary) to give full consideration to revising the schedule of proposed oil and gas lease sales adopted in the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Program, which was approved on January 17, 2017. The Secretary issued Secretarial Order 3350 on May 1, 2017, which further directed BOEM to develop a new National Outer Continental Shelf Oil and Gas Leasing Program. As directed by the Secretary, BOEM initiated the development of the 2019–2024 Program by issuing a request for information and comments (RFI) on July 3, 2017 (82 FR 30886). The Program development process required by section 18 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1344, and its implementing regulations, includes the development of a DPP, a Proposed Program, a Proposed Final Program (PFP), and Secretarial approval of the 2019–2024 Program.

This notice serves as the NOA for the DPP and the NOI for the preparation of a Programmatic EIS. The DPP includes the section 18 analysis for the OCS areas of potential interest to the Secretary and his initial proposed schedule of lease sales for the 2019–2024 Program. The

DPP provides the basis for gathering information and conducting analyses to inform the Secretary on which areas to include for further leasing consideration in the 2019–2024 Program.

The DPP for the 2019–2024 Program would make more than 98 percent of the OCS resources available to consider for oil and gas leasing during the 2019–2024 period. Including at this stage nearly the entire OCS for potential oil and gas discovery is consistent with advancing the goal of moving the United States from simply aspiring to energy independence to attaining energy dominance. This DPP would allow for unprecedented increases in access to America's extensive offshore oil and gas resources, a critical component of the Nation's energy portfolio, and emphasizes the importance of producing American energy in America.

The DPP will enable the Secretary to receive information necessary to conduct a thorough consideration of the Section 18(a)(2) factors in order to perform the balancing analysis required by Section 18(a)(3) of the OCS Lands Act. Including areas in the 2019–2024 Program will incentivize industry to employ their world-class geological and technical expertise to assess and evaluate America's potential offshore oil and gas resources. By not prematurely restricting or narrowing OCS areas under consideration, this DPP will allow industry the opportunity to further inform the Secretary of their interest in leasing frontier areas and to collect data in areas that have not been explored in decades, if ever. This will, in turn, further our understanding of the resources available on the OCS to meet national energy needs. The Secretary's approach to the DPP lease sale schedule does not prematurely foreclose exploration planning, but fosters it, to allow for potential for the discovery of oil and gas on the OCS.

Allowing for the potential discovery of new oil and gas reserves on the OCS is consistent with the Administration's America-First Energy Strategy, which seeks to achieve energy security and resilience by reducing U.S. reliance on imported energy. Additionally, OCS oil and gas production benefits the United States by helping to reinvigorate American manufacturing and job growth, and contributes to the gross domestic product. Many of the jobs in the oil and gas industry earn a significant wage premium; these employees have more purchasing power and can consume more goods and services, increasing their standard of living, and contributing more to the economy.

Grounded in the above principles, and after careful consideration of public input and the OCS Lands Act Section 18(a)(2) factors, the DPP proposes a lease sale schedule of 47 lease sales in all four OCS regions and includes 25 of the 26 planning areas: 19 lease sales in the Alaska Region (3 in the Chukchi Sea, 3 in the Beaufort Sea, 2 in Cook Inlet, and 1 sale each in the 11 other available planning areas in Alaska), 7 lease sales in the Pacific Region (2 each for Northern California, Central California, and Southern California, and 1 for Washington/Oregon), 12 lease sales in the Gulf of Mexico (GOM) Region (10 regionwide lease sales for the portions of the Central, Western, and Eastern GOM planning areas that are not currently under moratorium, and 2 sales for the portions of the Central and Eastern GOM planning areas that will no longer be under moratorium in 2022), and 9 lease sales in the Atlantic Region (3 sales each for the Mid- and South Atlantic, 2 for the North Atlantic, and 1 for the Straits of Florida).

The DPP does not include a sale in the North Aleutian Basin Planning Area. This area was withdrawn on December 16, 2014, from consideration for any oil and gas leasing for a time period without specific expiration.

TABLE 1—2019–2024 DRAFT PROPOSED PROGRAM LEASE SALE SCHEDULE

Sale year	OCS Region	Program area
1. 2019	Alaska	Beaufort Sea.
2. 2020	Alaska	Chukchi Sea.
3. 2020	Pacific	Southern California.
4. 2020	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
5. 2020	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
6. 2020	Atlantic	South Atlantic.
7. 2020	Atlantic	Mid-Atlantic.
8. 2021	Alaska	Beaufort Sea.
9. 2021	Alaska	Cook Inlet.
10. 2021	Pacific	Washington/Oregon.
11. 2021	Pacific	Northern California.
12. 2021	Pacific	Central California.
13. 2021	Atlantic	North Atlantic.
14. 2021	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
15. 2021	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
16. 2022	Alaska	Chukchi Sea.
17. 2022	Pacific	Southern California.
18. 2022	Atlantic	Mid-Atlantic.
19. 2022	Atlantic	South Atlantic.
20. 2022	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
21. 2022	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
22. 2023	Alaska	Beaufort Sea.
23. 2023	Alaska	Cook Inlet.
24. 2023	Alaska	Hope Basin.
25. 2023	Alaska	Norton Basin.
26. 2023	Alaska	St. Matthew-Hall.
27. 2023	Alaska	Navarin Basin.
28. 2023	Alaska	Aleutian Basin.
29. 2023	Alaska	St. George Basin.
30. 2023	Alaska	Bowers Basin.
31. 2023	Alaska	Aleutian Arc.
32. 2023	Alaska	Shumagin.
33. 2023	Alaska	Kodiak.
34. 2023	Alaska	Gulf of Alaska.

TABLE 1—2019–2024 DRAFT PROPOSED PROGRAM LEASE SALE SCHEDULE—Continued

Sale year	OCS Region	Program area
35. 2023	Pacific	Central California.
36. 2023	Pacific	Northern California.
37. 2023	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
38. 2023	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
39. 2023	Gulf of Mexico	Eastern and Central Gulf of Mexico.**
40. 2023	Atlantic	Straits of Florida.
41. 2023	Atlantic	North Atlantic.
42. 2024	Alaska	Chukchi Sea.
43. 2024	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
44. 2024	Gulf of Mexico	Western, Central, and Eastern Gulf of Mexico.*
45. 2024	Gulf of Mexico	Eastern and Central Gulf of Mexico.**
46. 2024	Atlantic	South Atlantic.
47. 2024	Atlantic	Mid-Atlantic.

* All available areas, not including those subject to the GOMESA moratorium through June 30, 2022.
** Those areas available following the expiration of the GOMESA moratorium.

Including 25 of the 26 planning areas in the DPP allows for maximum flexibility in the future stages of the process, as well as the opportunity to seek additional input and further coordinate with key stakeholders on those areas. The Secretary is committed to enhancing coordination and collaboration with other governmental entities to discover solutions to multiple use challenges so that oil and gas resources can be extracted, critical military and other ocean uses can continue, and our sensitive physical and biological resources can be protected. The Secretary's goal is to increase access to America's energy resources and to provide environmental stewardship based upon the most up to date environmental information and analysis.

The DPP serves as the basis for the proposed action to be evaluated in the Programmatic EIS. This NOI starts the formal scoping process for the Programmatic EIS under 40 CFR 1501.7 of the Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations and solicits input from the public regarding alternatives, impacting factors, and environmental resources and issues of concern in the DPP areas that should be evaluated in the Programmatic EIS. The purpose of scoping for the Programmatic EIS is to determine the appropriate content and scope for a focused and balanced programmatic environmental analysis by ensuring significant issues are identified early and properly studied during development of the Programmatic EIS. BOEM expects to consider environmentally sensitive areas in the Programmatic EIS that could be considered for exclusion as part of the Section 18 winnowing process.

Please go to *https://www.boem.gov/National-OCS-Oil-and-Gas-Leasing-Program-for-2019-2024/* for additional information about the Programmatic EIS and the 2019–2024 Program.

Public Comment: All interested parties, including Federal, state, tribal, and local governments and others, can submit written comments on the DPP and the scope of the Programmatic EIS, significant issues that should be addressed, and the types of oil and gas activities of interest in OCS planning areas included in the DPP (*e.g.,* gas in shallow water and industry interest in leasing and/or exploring planning areas not included in previous National OCS Programs). Comments on individual lease sale EIS documents should be submitted separately through the unique docket for each sale. Comments that provide scientific information, geospatial or other data, or anecdotal evidence to support your input are most useful and such information can be provided as attachments to comments.

BOEM will protect privileged or proprietary information that you submit in accordance with the Freedom of Information Act (FOIA) and OCSLA requirements. To avoid inadvertent release of such information, interested parties should mark all documents and every page containing such information with ''Confidential—Contains Proprietary Information.'' To the extent a document contains a mix of proprietary and nonproprietary information, interested parties should mark clearly which portion of the document is proprietary and which is not. Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. The OCSLA states that the ''Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this subchapter, established by regulation, or agreed to by the parties'' (43 U.S.C. 1344(g)). BOEM considers each interested party's nominations of specific blocks to be proprietary, and therefore BOEM will not release information that identifies any particular nomination, so as not to compromise the competitive position of any participants in the process of indicating interest.

However, please be aware that BOEM's practice is to make all other public comments, including the names and addresses of individuals, available for public inspection. Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so. In order for BOEM to consider withholding from disclosure your personal identifying information, you must identify any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence(s) of the disclosure of information, such as embarrassment, injury or other harm. Note that BOEM will make available for public inspection, in their entirety, all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

Public Meetings: BOEM will hold a series of public meetings to provide information and the opportunity for public comment on the 2019–2024 Program and the Programmatic EIS. BOEM's public meetings will be held using an open house format. The open house format allows members of the public to come to a meeting any time during meeting hours to view information, provide comments, and discuss the 2019–2024 Program and the Programmatic EIS with BOEM staff.

Public meetings will be held between now and March 9, 2018 to receive scoping comments on the Programmatic EIS. Meetings are being planned for, but are not necessarily limited to the following cities:

- Washington, DC;
- Augusta, ME;
- Concord, NH;
- Boston, MA;
- Providence, RI;
- Hartford, CT;
- Albany, NY;
- Trenton, NJ;
- Dover, DE;
- Annapolis, MD;
- Richmond, VA;
- Raleigh, NC;
- Columbia, SC;
- Atlanta, GA;
- Tallahassee, FL;
- Montgomery, AL;
- Jackson, MS;
- Baton Rouge, LA;
- Austin, TX;
- Sacramento, CA;
- Salem, OR;
- Olympia, WA;
- Anchorage, AK.

Specific dates, times, and venues will be posted on *https://www.boem.gov/National-OCS-Program.*

Cooperating Agencies: BOEM invites other Federal agencies and state, tribal, and local governments to consider becoming cooperating agencies in the preparation of the Programmatic EIS. Pursuant to CEQ regulations and guidelines, qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies and governments should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role as a cooperating agency in the environmental analysis neither enlarges nor diminishes its authority in the NEPA process. BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including schedules, milestones, responsibilities, scope and expected detail of cooperating agencies' contributions, and availability of predecisional information. BOEM anticipates this summary will form the basis for a Cooperating Agency Agreement between BOEM and any cooperating agency. Agencies should also consider the ''Factors for Determining Cooperating Agency Status'' in CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: *Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act.* This document is available on the website, *https://ceq.doe.gov/guidance/guidance.html.* BOEM, as lead agency, does not plan to provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM during the normal public input stages of the NEPA process.

Authority: This NOA for the DPP for the 2019–2024 Program is published in accordance with section 18 of OCSLA and its implementing regulations (30 CFR part 556). This NOI to prepare the 2019–2024 Programmatic EIS is published pursuant to the regulations (40 CFR 1501.7 and 43 CFR 46.235) implementing the provisions of NEPA.

Dated: December 11, 2018.

Walter Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

BILLING CODE 4310–MR–P

Figure 1: DPP Map - Contiguous United States

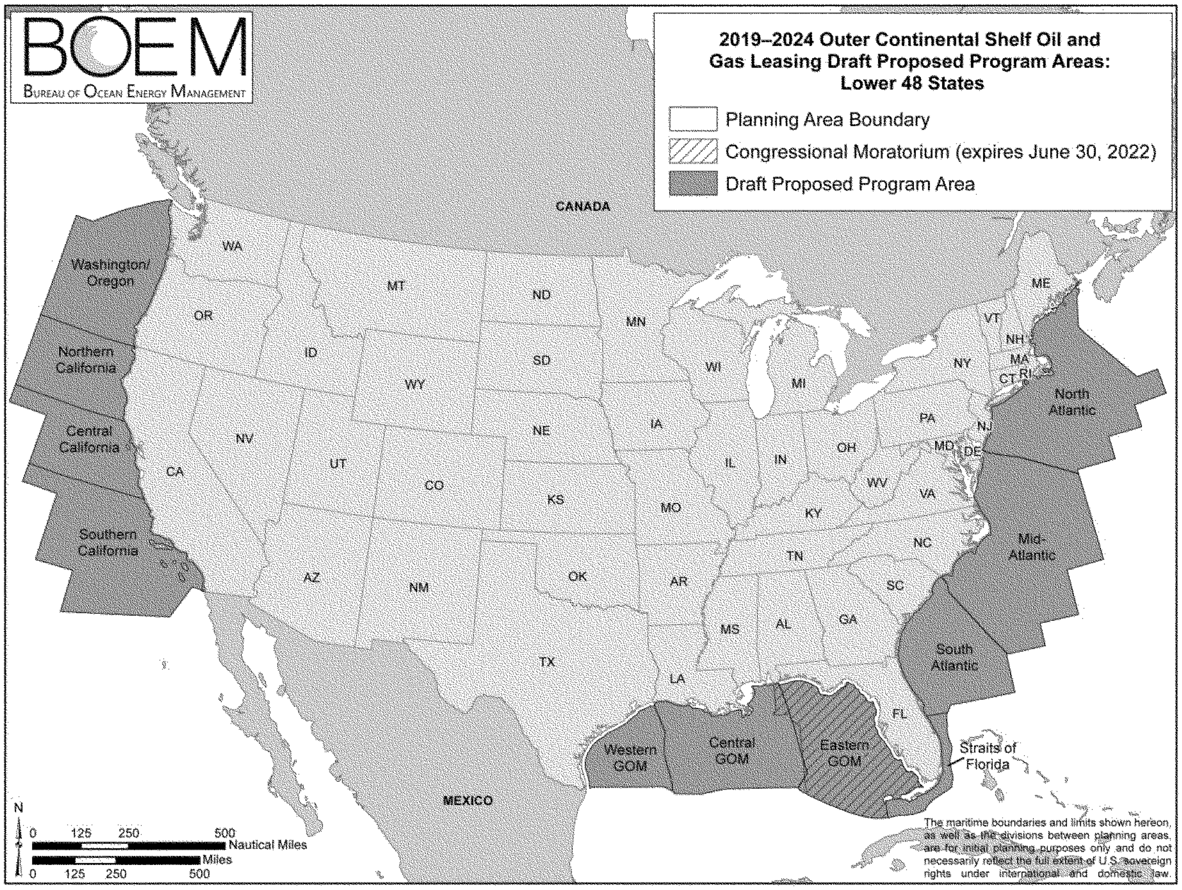
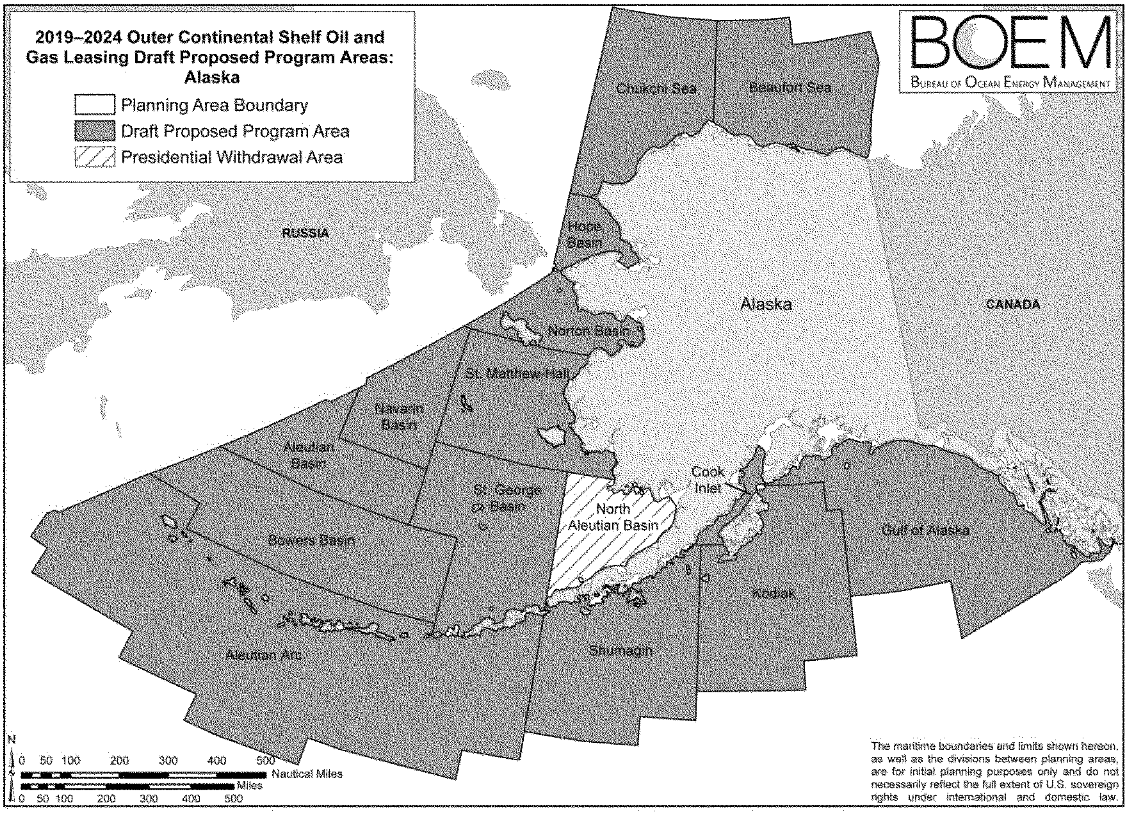


Figure 2: DPP Map - Alaska



[FR Doc. 2018–00083 Filed 1–5–18; 8:45 am]

BILLING CODE 4310–MR–C

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1093]

Certain Mobile Electronic Devices and Radio Frequency and Processing Components Thereof (II); Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 30, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Qualcomm Incorporated of San Diego, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile electronic devices and radio frequency and processing components thereof by reason of infringement of certain claims of U.S. Patent No. 9,154,356 (''the '356 patent''); U.S. Patent No. 9,473,336 (''the '336 patent''); U.S. Patent No. 8,063,674 (''the '674 patent''); U.S. Patent No. 7,693,002 (''the '002 patent''); and U.S. Patent No. 9,552,633 (''the '633 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2017).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 2, 2018, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after

importation of certain mobile electronic devices and radio frequency and processing components thereof by reason of infringement of one or more of claims 1, 7, 8, 10, 11, 17, and 18 of the '356 patent; claim 4 of the '336 patent; claims 1, 5–8, 12, 16–18, and 21–22 of the '674 patent; claims 1–4, 7–9, 11, 17, 20–23, 31–33 and 36 of the '002 patent; and claims 1–3, 10–12, 18, and 22–24 of the '633 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding Administrative Law Judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in his investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Qualcomm Incorporated, 5775 Morehouse Drive, San Diego, CA 92121.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Apple Inc., 1 Infinite Loop, Cupertino, CA 95014.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 3, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–00105 Filed 1–5–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1092]

Certain Self-Anchoring Beverage Containers; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 31, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Mighty Mug, Inc. of Rahway, New Jersey. An amended complaint was filed on December 1, 2017, on behalf of Alfay Designs, Inc., of Rahway, New Jersey, Mighty Mug, Inc., of Rahway, New Jersey, and Harry Zimmerman of Los Angeles, California. Supplements to the amended complaint were filed on December 4, 8, 19, and 22, 2017. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of self-anchoring beverage containers by reason of infringement of (1) certain claims of U.S. Patent No. 8,028,850 (''the '850 patent'') and U.S. Patent No. 8,757,418 (''the '418 patent''); and (2) U.S. Trademark Registration No. 4,191,803 (''the '803 trademark''). The amended complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2017).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on January 2, 2018, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain self-anchoring beverage containers by reason of infringement of one or more of claim 1 of the '850 patent and claim 1 of the '418 patent; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain self-anchoring beverage containers by reason of infringement of the '803 trademark; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Alfay Designs, Inc., 665 Martin Street, Rahway, NJ 07065.

Mighty Mug, Inc., 665 Martin Street, Rahway, NJ 07065.

Harry Zimmerman, 310 Comstock Avenue, Los Angeles, CA 90024.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Telebrands, Corp., One Telebrands Plaza, Fairfield, NJ 07004.

HIRALIY, Room 1306, Easter Tower, Poly World Trade Center Pazhou, No. 1000 Xingang Dong Road, Haizhu District, Guangzhou, Guangdong Province, China.

Chekue, Shenzhen Chekue Trading Co. Ltd., Shenzhen, Guangdong Province, 518131 China.

Tapcet, Guangzhou Tinghui Trade Co., Ltd., Guangzhou, Tianhe, Longdong W Street, Guangdong Province, China.

OUOH, Zhejiang OUOH Houseware Co., Ltd., No. 1278–1308 Wanxiang Road, Wanquan Town, Wenzhou, Zhejiang Province, 325204 China.

DevBattles, 3rd Floor, Street Cardinala Josepha Slipogo, 7, Ternopil, Ukraine, 46000.

OTELAS, MB, Panevezio g.7–19, LT–92316, Klaipeda, Lithuania.

Artiart Limited, 8F–4, No. 412, SEC5, Chung Hsiao East Road, Taipei, Taiwan.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 3, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–00104 Filed 1–5–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by-the Drug Enforcement Administration as importers of various classes of schedule I or II controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as importers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for these notices.

Company	FR Docket	Published
Galephar Pharmaceutical Research, Inc	82 FR 49663	October 26, 2017.
Rhodes Technologies	82 FR 51298	November 3, 2017.
Anderson Brecon, Inc	82 FR 52941	November 15, 2017.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I or II controlled substances to the above listed persons.

Dated: December 29, 2017.

Neil D. Doherty,

Deputy Assistant Administrator.

[FR Doc. 2018–00118 Filed 1–5–18; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Ocean Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Ocean Sciences (#10752)—C–DEBI, University of Southern California (Site Visit).

Date And Time:

January 29, 2018; 8:00 a.m.–9:00 p.m.

January 30, 2018; 8:00 a.m.–4:00 p.m.

Place: C–DEBI, University of Southern California, Los Angeles, CA 90089.

Type of Meeting: Part-open.

Contact Person: Michael Sieracki, Division of Ocean Sciences, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone (703) 292–7585.

Purpose of Meeting: Site visit to review the Center for Dark Biosphere Investigations (C–DEBI) Science and Technology Center.

Agenda: Review the C–DEBI Research Accomplishments and Organizational Structure & Partner Involvement to achieve center goals; planning and decision-making; past accomplishments and future plans.

January 29, 2018; 8:00 a.m.–9:00 p.m.

8:00 a.m.–9:00 a.m. Center Overview (Jan Amend) [Victory Room]
9:00 a.m.–9:20 a.m. Theme 1 Research (Beth Orcutt)
9:20 a.m.–9:40 a.m. Theme 2 Research (Victoria Orphan)
9:40 a.m.–10:00 a.m. Theme 3 Research (Steve Finkel)
10:00 a.m.–10:30 a.m. Review Team Executive Session [Room 201]
10:00 a.m.–10:30 a.m. Coffee Break [Champions Room]
10:30 a.m.–10:50 a.m. Data Management and Integration (John Heidelberg) [Victory Room]
10:50 a.m.–11:10 a.m. DMI Application (Ben Tully)
11:10 a.m.–11:30 a.m. Technology (Geoff Wheat)
11:30 a.m.–12:00 p.m. Review Team Executive Session [Room 201]
12:00–1:30 p.m. Lunch—Review Team Discussion with Students/Postdocs [Champions Room]
1:30 p.m.–2:10 p.m. Education, Outreach, and Diversity (Stephanie Schroeder, Gwen Noda) [Victory Room]
2:10 p.m.–2:30 p.m. C4–REU (Roman Barco)
2:30 p.m.–2:45 p.m. Plans for Phase 3 (Julie Huber)
2:45 p.m.–3:15 p.m. Summary and Q&A (Andy Fisher et al.)
3:15 p.m.–3:45 p.m. Review Team Executive Session [Room 201]
3:45 p.m.–4:00 p.m. Break
4:00 p.m.–5:30 p.m. Poster Session [Champions Room]
5:30 p.m.–6:00 p.m. Interactive Discussion with Review Team [Victory Room]
6:00 p.m.–6:30 p.m. Review Team Executive Session [Room 201]
6:30 p.m.–6:45 p.m. Feedback Provided to PIs
7:00 p.m.–9:00 p.m. Review Team Working Dinner [McKays Trophy Room, Radisson]

January 30, 2018; 8:00 a.m.—4:00 p.m. (Closed Sessions)

8:00 a.m.–9:00 a.m. Review Team Meets with Institution Administrators and Investigators Only
9:00 a.m.–10:00 a.m. C–DEBI Response to Feedback
10:00 a.m.–4:00 p.m. Review Team Prepares Report (Working Lunch)
4:00 p.m. Departure

Reason For Closing: During closed sessions the review will include information of a proprietary or confidential nature, including technical and financial information. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–00088 Filed 1–5–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Committee on Equal Opportunities in Science and Engineering (CEOSE) Advisory Committee Meeting (#1173)

Date and Time: February 1, 2018; 1:00 p.m.–5:30 p.m. February 2, 2018; 8:30 a.m.–3:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. To help facilitate your entry into the building, please contact Una Alford (*ualford@nsf.gov* or 703–292–7111) on or prior to January 29, 2018.

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA), National Science Foundation, 2415 Eisenhower Avenue Alexandria, VA 22314. Contact Information: 703–292–8040/*banderso@nsf.gov*.

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the website at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

- Opening Statement and Chair Report by the CEOSE Chair
- NSF Executive Liaison Report
- Discussion: 2015–2016 Biennial Report—Recommendation and Dissemination
- Presentation: Pursing Meaningful Actions in Support of Broadening Participation in Computing
- Presentation: NSF Big Idea: Harnessing Data for 21st Century Science and Engineering
- Reports and Updates from the CEOSE Liaisons and the Federal Liaisons
- Panel: Inclusion of Diverse Community Voices
- Meeting with NSF Director and Chief Operating Officer
- Discussion: 2017–2018 CEOSE Biennial Report to Congress

Dated: January 2, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–00093 Filed 1–5–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On December 1, 2017, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. The permits were issued on January 2, 2018 to:

1. Bradford Clement—Permit No. 2018–027
2. Stephen C. Riser—Permit No. 2018–029

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 2018–00087 Filed 1–5–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Slab Thickness Changes between Column Lines I to J–1 and 2 to 4 at Elevation 153′–0″

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the Design Certification Rule for AP1000 Design Control Document (DCD). The Tier 1 information for which a plant-specific departure and exemption is being requested includes a change to the thickness of one floor in the auxiliary building located between Column Lines I to J–1 and Column Lines 2 to 4 at elevation 153′–0″. The NRC is issuing License Amendment Nos. 89 and 88 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on October 6, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website*: Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated August 30, 2016, as supplemented by letter dated February 16, 2017 (ADAMS under Accession Nos. ML16243A373 and ML17051A004, respectively).
- *NRC's PDR*: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 89 and 88 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to the Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific DCD Tier 2* information and involves related changes to the VEGP Units 3 and 4 COL Appendix C (and corresponding plant-specific DCD Tier 1) information. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, appendix D, design certification rule is also requested for the plant-specific Tier 1 departures.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17254A129.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17254A131 and ML17254A132, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML17254A127 and ML17254A128, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated August 30, 2016, as supplemented by letter dated March 14, 2017, Southern Nuclear Operating Company, Inc., (licensee) requested from the Nuclear Regulatory Commission (NRC or Commission) an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in 10 CFR part 52, appendix D, ''Design Certification Rule for AP1000 Design,'' as part of license amendment request (LAR) 16–019, ''Slab Thickness Changes between Column Lines I to J–1 and 2 to 4 at Elevation 153′–0″.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation that supports this license amendment, which can be found at ADAMS Accession Number ML17254A129, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, as described in the licensee's request dated August 30, 2016, as supplemented by letter dated March 14, 2017. This exemption is related to, and necessary for, the granting of License Amendments No. 89 and 88, which is being issued concurrently with this exemption.

3. As explained in Section 5 of the NRC staff's Safety Evaluation that supports this license amendment (ADAMS Accession Number ML17254A129), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated August 30, 2016, as supplemented by letter dated March 14, 2017 (ADAMS Accession Nos. ML16243A373 and ML17007A159, respectively), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on March 28, 2017 (82 FR 15377). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on August 30, 2016, and supplemented by letter dated March 14, 2017. The exemption and amendment were issued on October 6, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17254A125).

Dated at Rockville, Maryland, this 2nd day of January 2, 2018.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2018–00055 Filed 1–5–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2017; Order No. 4323]

FY 2017 Annual Compliance Report

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service has filed an Annual Compliance Report on the costs, revenues, rates, and quality of service associated with its products in fiscal year 2017. Within 90 days, the Commission must evaluate that information and issue its determination as to whether rates were in compliance, and whether service standards in effect were met. To assist in this, the Commission seeks public comments on the Postal Service's Annual Compliance Report.

DATES: *Comments are due:* February 1, 2018. *Reply Comments are due:* February 12, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On December 29, 2017, the United States Postal Service (Postal Service) filed with the Commission its Annual Compliance Report (ACR) for fiscal year (FY) 2017, pursuant to 39 U.S.C. 3652.[1] Section 3652 requires submission of data and information on the costs, revenues, rates, and quality of service associated with postal products within 90 days of the closing of each fiscal year. In conformance with other statutory provisions and Commission rules, the ACR includes the Postal Service's FY 2017 Comprehensive Statement, its FY 2017 annual report to the Secretary of the Treasury on the Competitive Products Fund, and certain related Competitive Products Fund material. *See respectively,* 39 U.S.C. 3652(g), 39 U.S.C. 2011(i), and 39 CFR 3060.20–23. In line with past practice, some of the material in the FY 2017 ACR appears in non-public annexes.

The filing begins a review process that results in an Annual Compliance Determination (ACD) issued by the Commission to determine whether Postal Service products offered during FY 2017 were in compliance with applicable title 39 requirements.

II. Overview of the Postal Service's FY 2017 ACR

Contents of the filing. The Postal Service's FY 2017 ACR consists of a 77-page narrative; extensive additional material appended as separate folders and identified in Attachment One; and an application for non-public treatment of certain materials, along with supporting rationale, filed as Attachment Two. The filing also includes the Comprehensive Statement,[2] Report to the Secretary of

[1] United States Postal Service FY 2017 Annual Compliance Report, December 29, 2017 (FY 2017 ACR). Public portions of the Postal Service's filing are available on the Commission's website at *http://www.prc.gov.*

[2] In years prior to 2013, the Commission reviewed the Postal Service's reports prepared pursuant to 39 U.S.C. 2803 and 39 U.S.C. 2804 (filed as the Comprehensive Statement by the Postal Service) in its ACD. However, as it has for the past several years, the Commission intends to issue a separate notice soliciting comments on the comprehensive

Continued

the Treasury, and information on the Competitive Products Fund filed in response to Commission rules. This material has been filed electronically with the Commission, and some also has been filed in hard copy form.

Scope of the filing. The material appended to the narrative consists of: (1) Domestic product costing material filed on an annual basis summarized in the Cost and Revenue Analysis (CRA); (2) comparable international costing material summarized in the International Cost and Revenue Analysis (ICRA); (3) worksharing-related cost studies; and (4) billing determinant information for both domestic and international mail. FY 2017 ACR at 2–3. Inclusion of these four data sets is consistent with the Postal Service's past ACR practices. As with past ACRs, the Postal Service has split certain materials into public and non-public versions. *Id.* at 3.

''*Roadmap*'' *document.* A roadmap to the FY 2017 ACR can be found in Library Reference USPS–FY17–9. This document provides brief descriptions of the materials submitted, as well as the flow of inputs and outputs among them; a discussion of differences in methodology relative to Commission methodologies in last year's ACD; and a list of special studies and a discussion of obsolescence, as required by Commission rule 3050.12. *Id.* at 3.

Methodology. The Postal Service states that it has adhered to the methodologies historically used by the Commission subject to changes identified and discussed in Library Reference USPS–FY17–9 and in prefaces accompanying the appended folders. *Id.* at 4. The Postal Service observes that one noteworthy methodological change regarding product costs was discussed by the Commission in Order No. 3506.[3] Going forward, the Postal Service's calculation of attributable costs will be changing to include a product's inframarginal costs developed as part of the estimation of a product's incremental costs. FY 2017 ACR at 4. As a consequence, the costs labeled as attributable costs in each row of the FY 2017 CRA are not directly comparable to costs reported with the same label in the CRAs filed prior to FY 2016. *Id.*

Market dominant product-by-product costs, revenues, and volumes. Comprehensive cost, revenue, and volume data for all market dominant products of general applicability are shown directly in the FY 2017 CRA or ICRA. *Id.* at 7.

The FY 2017 ACR includes a discussion by class of each market dominant product, including costs, revenues, and volumes, workshare discounts, and passthroughs responsive to 39 U.S.C. 3652(b), and FY 2017 incentive programs. *Id.* at 7–48.

In response to the Commission's FY 2010 ACD directives,[4] the Postal Service states that it is providing information regarding: (1) All operational changes designed to reduce flats costs and the estimated financial effects of such changes (*id.* at 25–31); (2) all costing methodology improvements made in FY 2017 and the estimated financial effects of such changes (*id.* at 31–35); and (3) a statement summarizing the historical and current year subsidy of the flats product (*id.* at 35). In addition, the Postal Service states that in the next general market dominant price change, it plans to increase the price of Standard Mail Flats by at least consumer price index times 1.05. *Id.* at 24. In the FY 2016 ACD, the Commission directed the Postal Service to submit an updated report analyzing how the removal of Flats Sequencing System pricing in Docket No. R2017–1 impacted the cost, contribution, and revenue of periodicals in FY 2017, and whether the removal improved the efficiency of Periodicals pricing in FY 2017.[5] The Postal Service provides its updated report in Library Reference USPS–FY17–44. FY 2017 ACR at 39.

Market dominant negotiated service agreements. The FY 2017 ACR presents information on the PHI Acquisitions, Inc. negotiated service agreement (NSA), the only market dominant NSA in effect in FY 2017. *Id.* at 46–47.

Service performance. The Postal Service notes that the Commission issued rules on periodic reporting of service performance measurement and customer satisfaction in FY 2010. Responsive information appears in Library Reference USPS–FY17–29. *Id.* at 49.

Customer satisfaction. The FY 2017 ACR discusses the Postal Service's approach for measuring customer experience and satisfaction; describes the methodology; presents a table with survey results; compares the results from FY 2016 to FY 2017; and provides information regarding customer access to postal services. *Id.* at 54–65.

Competitive products. The FY 2017 ACR provides costs, revenues, and volumes for competitive products of general applicability in the FY 2017 CRA or ICRA. For competitive products not of general applicability, data are provided in non-public Library References USPS–FY17–NP2 and USPS–FY17–NP27. *Id.* at 66. The FY 2017 ACR also addresses the competitive product pricing standards of 39 U.S.C. 3633. *Id.* at 66–73. Additionally, the Postal Service responds to the Commission's Directive in the FY 2016 ACD requiring it to identify each NSA product that had no mailpieces shipped under its contract in future ACRs. FY 2016 ACD at 83. This information is provided in USPS–FY17–NP27 (for domestic NSAs) and USPS–FY17–NP2 (for international NSAs). *Id.* at 74.

Market tests; nonpostal services. The Postal Service discusses the two competitive market tests conducted during FY 2017 and nonpostal services. *Id.* at 75.

III. Procedural Steps

Statutory requirements. Section 3653 of title 39 requires the Commission to provide interested persons with an opportunity to comment on the ACR and to appoint an officer of the Commission (Public Representative) to represent the interests of the general public. The Commission hereby solicits public comment on the Postal Service's FY 2017 ACR and on whether any rates or fees in effect during FY 2017 (for products individually or collectively) were not in compliance with applicable provisions of chapter 36 of title 39 or Commission regulations promulgated thereunder. Commenters addressing market dominant products are referred in particular to the applicable requirements (39 U.S.C. 3622(d) and (e) and 39 U.S.C. 3626); objectives (39 U.S.C. 3622(b)); and factors (39 U.S.C. 3622(c)). Commenters addressing competitive products are referred to 39 U.S.C. 3633.

The Commission also invites public comment on the cost coverage matters the Postal Service addresses in its filing; service performance results; levels of customer satisfaction achieved; and such other matters that may be relevant to the Commission's review.

Access to filing. The Commission has posted the publicly available portions of the FY 2017 ACR on its website at *http://www.prc.gov.*

Comment deadlines. Comments by interested persons are due on or before February 1, 2018. Reply comments are

statement and provide its related analysis in a separate report from the ACD.

[3] *Id.; see* Docket No. RM2016–2, Order Concerning United Parcel Service, Inc.'s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), September 9, 2016 (Order No. 3506).

[4] Docket No. ACR2010, Annual Compliance Determination, March 29, 2011, at 106–107 (FY 2010 ACD).

[5] Docket No. ACR2016, Annual Compliance Determination, March 28, 2017, at 22 (FY 2016 ACD).

due on or before February 12, 2018. The Commission, upon completion of its review of the FY 2017 ACR, comments, and other data and information submitted in this proceeding, will issue its ACD.

Public Representative. Mallory L. Smith is designated to serve as the Public Representative to represent the interests of the general public in this proceeding. Neither the Public Representative nor any additional persons assigned to assist her shall participate in or advise as to any Commission decision in this proceeding other than in his or her designated capacity.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. ACR2017 to consider matters raised by the United States Postal Service's FY 2017 Annual Compliance Report.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Mallory L. Smith as an officer of the Commission (Public Representative) in this proceeding to represent the interests of the general public.

3. Comments on the United States Postal Service's FY 2017 Annual Compliance Report to the Commission are due on or before February 1, 2018.

4. Reply comments are due on or before February 12, 2018.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–00082 Filed 1–5–18; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82425; File No. SR–Phlx–2017–74]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Withdrawal of a Proposed Rule Change To Introduce the Intellicator Analytic Tool

January 2, 2018.

On September 20, 2017, Nasdaq PHLX LLC (''Phlx'' 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 introduce the Intellicator Analytic Tool. The proposed rule change was published for comment in the **Federal Register** on October 4, 2017.[3]

On November 15, 2017, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission received three comment letters on the proposed rule change and a response from the Exchange.[6]

On December 22, 2017, the Exchange withdrew the proposed rule change (SR–PHLX–2017–74).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00073 Filed 1–5–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81754 (Sept. 28, 2017), 82 FR 46319.

[4] *See* 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82085, 82 FR 55459 (Nov. 21, 2017).

[6] *See* Letter from Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated November 8, 2017; Letter from Tyler Neville, Trader, dated November 21, 2017; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission, dated December 19, 2017; and Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, Nasdaq, to Brent J. Fields, Secretary, Commission, dated December 22, 2017, *available at https://www.sec.gov/comments/sr-phlx-2017-74/phlx201774.htm.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82430; File No. SR–NSCC–2017–017]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Adopt a Recovery & Wind-down Plan and Related Rules

January 2, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2017, National Securities Clearing Corporation (''NSCC'') 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 clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would (1) adopt the Recovery & Wind-down Plan of NSCC (''R&W Plan'' or ''Plan''); and (2) amend NSCC's Rules & Procedures (''Rules'') [4] in order 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''). The proposed rule change would also 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.

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad–22(e)(3)(ii) under the Act, by providing plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described below.[5] 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, as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, NSCC filed this proposed rule change as an 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, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is available at *http://www.dtcc.com/legal/sec-rule-filings.*

[4] Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] 17 CFR 240.17Ad–22(e)(3)(ii).

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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSCC is proposing to adopt the R&W Plan to be used by the 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. 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 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''); (ii) an analysis of NSCC's intercompany arrangements and critical links to other financial market infrastructures (''FMIs''); (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 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 comprehensive, effective, and transparent, how the tools provide appropriate 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.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that NSCC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools 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 operationally for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to NSCC were its governance structure and the nature of the markets within which NSCC operates. As a result of these considerations, 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 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''),[6] (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,[7] and (iii) the process for the allocation of losses among Members, as provided in Rule 4.[8] 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.[9] 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. Significantly, the Proposed Rules would provide Members and Limited Members with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly NSCC's strategy for winding down and transferring its business, and would provide NSCC with the legal basis to implement those aspects of the R&W Plan.

NSCC R&W Plan

The R&W Plan is intended to be used by the Board and NSCC's management in the event NSCC encounters scenarios that could potentially prevent it from

[6] *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).

[7] *See id.*

[8] *See* Rule 4 (Clearing Fund), *supra* note 4. NSCC is proposing changes to Rule 4 and other related rules regarding allocation of losses in a separate filing submitted simultaneously with this filing (File Nos. SR–NSCC–2017–018 and SR–NSCC–2017–806, referred to collectively herein as the ''Loss Allocation Filing''). NSCC expects the Commission to review both proposals together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

[9] 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.

being able to provide its critical services as a going concern. 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 description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Members and Limited Members with appropriate transparency into these features.

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 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 be maintained by NSCC in compliance with Rule 17Ad–22(e)(3)(ii) under the Act [10] by providing plans for the recovery and orderly wind-down of NSCC.

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. This overview section would provide a context for the R&W Plan by describing NSCC's business, organizational structure and critical links to other entities. 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.

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 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.

The 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. For example, the arrangement between NSCC and OCC governs the process by which OCC submits transactions to NSCC for settlement, and sets the time when the settlement obligations and the central counterparty trade guaranty shifts from OCC to NSCC with respect to these transactions.[11] The arrangement with CDS enables participants of CDS to clear and settle OTC trades with U.S. broker-dealers through subaccounts maintained by CDS through its own membership with NSCC.[12] The interface between DTC and NSCC permits transactions to flow between DTC's system and NSCC's Continuous Net Settlement (''CNS'') system in a collateralized environment.[13] NSCC's CNS relies on this interface with DTC for the book-entry movement of securities to settle transactions. This section of the Plan, identifying and briefly describing NSCC's established links, would 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 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 would provide an analysis of the potential systemic impact from a service disruption, and 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 consideration as to (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, as such, 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 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. Such critical services would include, for example, trade capture and recording through the Universal Trade Capture system,[14] services supporting Correspondent Clearing relationships,[15] the CNS system,[16] the Balance Order Netting system,[17] Mutual Funds Services,[18] and the settlement of money payments with respect to transactions processed by NSCC.[19] The R&W Plan would also include a non-exhaustive list of NSCC services that are not deemed critical.

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. As discussed further below, 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 Plan would describe the governance structure of both DTCC and NSCC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The 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 Plan would then identify the parties

[10] 17 CFR 240.17Ad–22(e)(3)(ii).

[11] *See* Securities Exchange Act Release Nos. 81266 (July 31, 2017), 82 FR 36484 (August 4, 2017) (SR–NSCC–2017–007, SR–OCC–2017–013); 81260 (July 31, 2017), 82 FR 36476 (August 4, 2017) (SR–NSCC–2017–803, SR–OCC–2017–804); Procedure III (Trade Recording Service (Interface with Qualified Clearing Agencies)), *supra* note 4.

[12] *See* Rule 61 (International Links), *supra* note 4.

[13] *See* Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), *supra* note 4.

[14] *See* Rule 7 (Comparison and Trade Recording Operation) and Procedure II (Trade Comparison and Recording Service), *supra* note 4.

[15] *See* Procedure IV (Special Representative Service), *supra* note 4.

[16] *See* Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), *supra* note 4.

[17] *See* Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation), *supra* note 4.

[18] *See* Rule 52 (Mutual Funds Services), *supra* note 4.

[19] *See* Rule 12 (Settlement) and Procedure VIII (Money Settlement Service), *supra* note 4.

responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The 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, and, due to NSCC's critical role in the markets in which it operates, oversight of NSCC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[20] The 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 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 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 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 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.[21] More generally, the 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. As described further below, 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 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.

NSCC Recovery Plan

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. As each event that could lead to a financial loss could be unique in its circumstances, 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, as described in greater detail below. In all cases, NSCC 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 in order to best protect NSCC, Members, and the markets in which it operates.

Managing Member Default Losses and Liquidity Needs Through the Crisis Continuum. The Recovery Plan would describe the risk management surveillance, tools, and governance that NSCC may employ across an increasing stress environment, which is referred to as the ''Crisis Continuum.'' This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stressed market phase, (3) a phase commencing with NSCC's decision to cease to act for a Member or Affiliated Family of Members,[22] and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to NSCC's decision to cease to act for a Member (referred to in the R&W Plan as a ''defaulting Member,'' and the event as a ''Member default'') pursuant to the Rules.[23]

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. 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 manages these risk exposures collectively to limit their overall impact on NSCC and its membership. 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.[24] NSCC 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.[25]

[20] The charter of the Board Risk Committee is *available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.*

[21] The 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; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

[22] The Plan would define an ''Affiliated Family'' of Members as a number of affiliated entities that are all Members of NSCC.

[23] *See* Rule 46 (Restrictions on Access to Services), *supra* note 4.

[24] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), *supra* note 4. NSCC's 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 also* 17 CFR 240.17Ad–22(e)(4).

[25] 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 Nos. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR–DTC–2017–004, SR–NSCC–2017–005, SR–FICC–2017–008); 81194 (July 24, 2017), 82 FR 35241 (July 28,

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. The Recovery Plan would 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, 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; [26] 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.[27]

The Recovery Plan would describe some of the indicators of the ''stressed 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.[28] 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. For example, in connection with managing its market risk during this phase, NSCC would, pursuant to the Rules, (1) monitor and assess the adequacy of Clearing Fund resources; (2), when necessary and appropriate pursuant to the Rules, assess and collect additional margin requirements; and (3) follow its operational procedures to liquidate the defaulting Member's portfolio. Management of liquidity risk through this phase would involve ongoing monitoring of the adequacy of NSCC's liquidity resources, and the Recovery Plan would identify certain actions NSCC may deploy as it deems necessary to mitigate a potential liquidity shortfall, which would include, for example, adjusting its strategy for closing out the defaulting Member's portfolio or seeking additional liquidity resources. 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, as proposed to be amended by the Loss Allocation Filing, would provide that losses be satisfied first by applying a ''Corporate Contribution,'' and then, if necessary, by allocating remaining losses to non-defaulting Members.[29]

The ''recovery phase'' of the Crisis Continuum would describe actions that NSCC may take to avoid entering into a wind-down of its business. In order to provide for an effective and timely recovery, the Recovery Plan would describe two stages of this phase: (1) A recovery corridor, 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; and (2) the recovery phase, 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.'' [30]

NSCC expects that significant deterioration of liquidity resources would cause it to enter the recovery corridor stage of this phase, and, as such, the actions it may take at this stage would be aimed at replenishing those resources. Circumstances that could cause it to enter the recovery corridor may include, for example, a rapid and material change in market prices or substantial intraday activity volume by the defaulting Member, neither of which are mitigated by intraday margin calls, or subsequent defaults by other Members or Affiliated Families during a compressed time

2017) (SR–DTC–2017–004, SR–NSCC–2017–005, SR–FICC–2017–008).

[26] NSCC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). *See* Securities Exchange Act Release Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006).

[27] *See supra* note 25.

[28] *See* Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) and Rule 46 (Restrictions on Access to Services), *supra* note 4.

[29] *See supra* note 8. The Loss Allocation Filing proposes to amend Rule 4 to define 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 would be 50 percent (50%) of the ''General Business Risk Capital Requirement,'' which is calculated pursuant to the Capital Policy and 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 compliance with Rule 17Ad–22(e)(15) under the Act. *See also supra* note 6; 17 CFR 240.17Ad–22(e)(15).

[30] The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an ''Event Period'' as the ten (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, as described in greater detail in that filing. The proposed Rule 4 would define a ''round'' as a series of loss allocations relating to an Event Period, and would provide 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'' (as defined in the proposed Rule 4) of those Members included in the round. *See supra* note 8.

period. 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 metrics referred to as ''Corridor Indicators.''

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. Corridor Indicators would include, for example, effectiveness and speed of NSCC's efforts to close out the portfolio of the defaulting Member, and an impediment to the availability of its financial resources. 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,[31] as well as management escalations required to authorize those steps. Because NSCC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the Corridor Indicators. As such, 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 stage between one day and two weeks. 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. The actual length of a recovery corridor would vary based on actual market conditions observed on the date and time NSCC enters the recovery corridor stage of the Crisis Continuum, 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, and would state that the available tools related to allocation of losses would only be used in this and subsequent phases of the Crisis Continuum.[32] 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 throughout the Crisis Continuum to address liquidity shortfalls if they arise. 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. These liquidity tools include, for example, NSCC's committed 364-day credit facility,[33] and the issuance and private placement of additional short-term promissory notes (''commercial paper'') and extendible notes, the cash proceeds of which provide NSCC with prefunded liquidity.[34] Additional voluntary or uncommitted tools to address potential liquidity shortfalls, for example uncommitted bank loans, 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.

As stated above, 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, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within 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 Corridor Indicators applicable to that phase of the Crisis Continuum, and, in most cases, by the measures and metrics that are assigned to those Corridor Indicators, as described above. Each of these indicators would have a defined review period and 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 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.

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 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 Plan would first identify some of the risks NSCC faces that could lead to these losses, which include, for example, the business and profit/loss risks of

[31] The Corridor Actions that would be identified in the Plan are 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 Plan for the Corridor Indicator to which the action relates.

[32] As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to Rule 4, described therein, reference is made to that filing and the details are not repeated here. *See supra* note 8.

[33] *See* Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR–DTC–2017–802, SR–NSCC–2017–802).

[34] *See* Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR–NSCC–2015–802).

unexpected declines in revenue or growth of expenses; 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 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.[35] The Recovery Plan would also describe NSCC's approach to financial risk and capital management. The 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 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,[36] (b) the Corporate Contribution,[37] 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.[38]

The 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.[39] Finally the 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.[40]

The Plan would also describe proposed Rule 60 (Market Disruption and Force Majeure), which NSCC is proposing to adopt in the Rules. This Proposed Rule would 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, as described in greater detail below.

The 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''), making 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 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 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. 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.

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 appropriate incentives to Members and minimize negative impact on Members and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad–22(e)(3)(ii) under the Act.[41] NSCC's analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

NSCC Wind-Down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of NSCC if the use of the recovery tools described in the Recovery Plan do not successfully return NSCC to financial viability. While NSCC believes that, given the comprehensive nature of the recovery tools, such event is extremely unlikely, as described in greater detail below, 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. Federal Bankruptcy Code,[42] and (3) after effectuating this transfer, NSCC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. NSCC believes 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 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. As such, a business reorganization or ''bail-in'' of debt approach would be unlikely to mitigate significant losses. Additionally, NSCC's 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.

[35] 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. *See* 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. *See* 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).

[36] *See supra* note 29.

[37] *See supra* note 29.

[38] *See supra* note 8.

[39] *See supra* note 6.

[40] *See supra* note 8.

[41] Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14).

[42] 11 U.S.C. 1101 *et seq.*

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.'' 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.[43] The Wind-down Plan would identify some of the indicators that it has entered this Runway Period, which would include, for example, successive Member defaults, significant Member retirements thereafter, and NSCC's inability to replenish its financial resources following the liquidation of the portfolio of the defaulting Member(s).

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 Plan, NSCC believes 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, 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. Federal Bankruptcy Code.[44] As stated above, 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. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, NSCC, except to the extent expressly provided in the court's order.[45]

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.[46] 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. As such, and as stated above, the Wind-down Plan does not contemplate NSCC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated. The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of NSCC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of NSCC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) NSCC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether NSCC could safely stabilize the business and protect its value without seeking bankruptcy protection, and NSCC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions NSCC or DTCC may take to prepare for wind-down in the period

[43] 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 make clear that NSCC cannot predict the willingness of Members to do so.

[44] *See* 11 U.S.C. 1101 *et seq.*

[45] *See id.* at 363.

[46] 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, it 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.

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 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.[47] 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.[48]

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, and are discussed below.

Proposed Rules

In connection with the adoption of the R&W Plan, NSCC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules would facilitate the execution of the R&W Plan and would provide Members and Limited Members with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both NSCC and Members. The Proposed Rules also provide a legal basis to these aspects of the Plan.

Rule 41 (Corporation Default)

The proposed Rule 41 (''Corporation Default Rule'') would provide a mechanism for the termination, valuation and netting of unsettled, guaranteed CNS transactions in the event NSCC is unable to perform its obligations or otherwise suffers a defined event of default, such as entering insolvency proceedings. The proposed Corporation Default Rule would 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[49] 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 forty-five days from the date on which the event that constitutes a Corporation Default occurred (or ''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. 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 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'').[50]

NSCC believes 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.

Rule 42 (Wind-Down of the Corporation)

The proposed Rule 42 (''Wind-down Rule'') would be adopted 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. The Wind-down Rule would 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. 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

[47] *See supra* note 6.

[48] *See supra* note 6.

[49] 12 U.S.C. 5381–5394.

[50] 12 U.S.C. 1811 *et seq.*

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.

Wind-down Trigger. First, the Proposed Rule would 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 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.

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 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 (as defined below and in the Proposed Rule). 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'').

Treatment of Pending Transactions. The Wind-down Rule would also 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. For example, the Proposed Rule would provide the Board with the ability to, if it deems practicable, based on NSCC's resources at that time, allow pending transactions to complete prior to the transfer of NSCC's business to a Transferee. 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. 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.

The Proposed Rule would 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.

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.

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, the proposed Wind-down Rule would 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.[51]

Comparability Period. 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. Further to this goal, 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

[51] 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.

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. 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.

Subordination of Claims Provisions and Miscellaneous Matters. The proposed Wind-down Rule would also 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.,* such firms are 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). This provision is designed to incentivize Members to participate in NSCC's recovery efforts.[52]

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.

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. 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,'' including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which NSCC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. 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. 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.

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.

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 is also proposing 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, as shown on Exhibit 5b, hereto.

2. Statutory Basis

NSCC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with Section 17A(b)(3)(F) of the Act,[53] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii) under the Act,[54] and the R&W Plan is consistent with Rule 17Ad–22(e)(15)(ii) under the Act,[55] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of NSCC be 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 NSCC or for which it is responsible.[56] The Recovery Plan and the proposed Force Majeure Rule would promote the prompt and accurate clearance and settlement of securities transactions by providing NSCC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools NSCC may use to address and minimize losses to both NSCC and Members. The Recovery Plan and the proposed Force Majeure Rule would provide NSCC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to

[52] 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.

[53] 15 U.S.C. 78q–1(b)(3)(F).

[54] 17 CFR 240.17Ad–22(e)(3)(ii).

[55] *Id.* at 240.17Ad–22(e)(15)(ii).

[56] 15 U.S.C. 78q–1(b)(3)(F).

enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible by enabling actions that would address and minimize losses.

The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule, which would both facilitate the implementation of the Wind-down Plan, would also 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. The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule would collectively establish a framework for the transfer and orderly wind-down of NSCC's business. These proposals would establish clear mechanisms for the transfer of NSCC's critical services and membership, and for the treatment of open, guaranteed CNS transactions in the event of NSCC's default. By doing so, the Wind-down Plan and these Proposed Rules are designed to facilitate the continuity of NSCC's critical services and enable Members and Limited Members to maintain access to NSCC's services through the transfer of its membership in the event NSCC defaults or the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of NSCC's critical clearance and settlement services, NSCC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of NSCC's business, NSCC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

Finally, the proposed change to the Rule numbers would align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies. Therefore, NSCC believes the proposed change would create ease of reference, particularly for Members that are also participants of the other Clearing Agencies, and, as such, would assist in promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, NSCC believes the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[57]

Rule 17Ad–22(e)(3)(ii) under the Act requires NSCC 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.[58] The R&W Plan and the Proposed Rules are designed to meet the requirements of Rule 17Ad–22(e)(3)(ii).[59]

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad–22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.[60] Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that NSCC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would address measures that NSCC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan 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 would set forth clear mechanisms for the transfer of NSCC's membership and business, and would be designed to facilitate continued access to NSCC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of NSCC in order to facilitate continuous access to NSCC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of NSCC. Therefore, NSCC believes the R&W Plan would provide 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, and, as such, meets the requirements of Rule 17Ad–22(e)(3)(ii).[61]

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Members and Limited Members with transparency regarding the material provisions of the Plan, and provide NSCC with a legal basis for implementation of those provisions. As such, NSCC also believes the Proposed Rules meet the requirements of Rule 17Ad–22(e)(3)(ii).[62]

NSCC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to NSCC's Members to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide NSCC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. NSCC also believes the recovery tools are effective, as NSCC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Members are bound by the Rules through their membership agreements with NSCC, and the Rules are adopted pursuant to a framework established by Rule 19b–4 under the Act,[63] providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which NSCC is a party, as described above. Further, as many of the tools are embedded in NSCC's ongoing risk management practices or are embedded into its predefined default-management procedures, NSCC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are, or are proposed to be, included in the Rules, which are publicly available. NSCC believes the recovery tools also provide appropriate incentives to the Members, as they are designed to control the amount of risk they present to NSCC's

[57] *Id.*

[58] 17 CFR 240.17Ad–22(e)(3)(ii).

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.* at 240.19b–4.

clearance and settlement system. Members' financial obligations to NSCC, particularly their Required Deposits to the Clearing Fund, are measured by the risk posed by the Members' activity in NSCC's systems, which incentivizes them to manage that risk which would correspond to lower financial obligations. Finally, NSCC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to NSCC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, NSCC believes that the recovery tools that would be identified and described in its Recovery Plan, including the authority provided to it in the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad–22(e)(3)(ii).[64]

Therefore, NSCC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii).[65]

Rule 17Ad–22(e)(15)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, including by holding LNA 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.[66] While the Capital Policy addresses how NSCC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs 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 would also 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 sufficient amount of LNA that NSCC should 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, NSCC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad–22(e)(15)(ii).[67]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe the proposal would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act.[68] The proposal would apply uniformly to all Members and Limited Members. NSCC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Member default scenario or non-default event. NSCC is not proposing to alter the standards or requirements for becoming or remaining a Member, or otherwise using its services. NSCC also does not propose to change its methodology for calculation of margin or Clearing Fund contributions. The proposal is intended to (1) address the risk of loss events and identify the tools and resources available to it to withstand and recover from such events, so that it can restore normal operations, and (2) provide a framework for its orderly wind-down and the transfer of its business in the event those recovery tools do not restore NSCC to financial viability, as described herein.

The R&W Plan and each of the Proposed Rules have been developed and documented in order to satisfy applicable regulatory requirements, as discussed above.

With respect to the Recovery Plan, the proposal generally reflects NSCC's existing tools and existing internal procedures. Existing tools that would have a direct impact on the rights, responsibilities or obligations of Members are reflected in the existing Rules or are proposed to be included in the Rules. Accordingly, the Recovery Plan and the proposed Force Majeure Rule are intended to provide a roadmap, define the strategy and identify the tools available to NSCC in connection with its recovery efforts. By proposing to enhance NSCC's existing internal management and its regulatory compliance related to its recovery efforts, NSCC does not believe the Recovery Plan or the proposed Force Majeure Rule would have any impact, or impose any burden, on competition.

With respect to the Wind-down Plan, the proposed Corporation Default Rule, and the proposed Wind-down Rule, which facilitate the execution of the Wind-down Plan, the proposal would operate to effect the transfer of all eligible Members and Limited Members to the Transferee, and would not prohibit any market participant from either bidding to become the Transferee or from applying for membership with the Transferee. The proposal also would not prohibit any Member or Limited Member from withdrawing from NSCC prior to the Transfer Time, as is permitted under the Rules today, or from applying for membership with the Transferee. Therefore, as the proposal would treat each similarly situated Member identically under the Wind-down Plan and under these Proposed Rules, NSCC does not believe the Wind-down Plan, the proposed Corporation Default Rule, or the proposed Wind-down Rule would have any impact, or impose any burden, on competition.

NSCC does not believe that the proposed change to the Rule numbers would have any impact on competition because this proposed change is technical in nature and would not change NSCC's current practices or the rights or obligations of Members.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

While NSCC has not solicited or received any written comments relating to this proposal, NSCC has conducted outreach to Members in order to provide them with notice of the proposal. NSCC will notify the Commission of any written comments received by NSCC.

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 clearing agency consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

[64] *Supra* note 41.

[65] 17 CFR 240.17Ad–22(e)(3)(ii).

[66] *Id.* at 240.17Ad–22(e)(15)(ii).

[67] *Id.*

[68] 15 U.S.C. 78q–1(b)(3)(I).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–NSCC–2017–017 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–NSCC–2017–017. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2017–017 and should be submitted on or before January 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00078 Filed 1–5–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82427; File No. SR–FICC–2017–022]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend the Loss Allocation Rules and Make Other Changes

January 2, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2017, Fixed Income Clearing Corporation (''FICC'') 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 clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications 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'') in order to amend provisions in the Rules regarding loss allocation as well as make other changes, as described in greater detail below.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The primary purpose of this proposed rule change is to amend GSD's and MBSD's loss allocation rules in order to enhance the resiliency of the Divisions' loss allocation processes so that each Division can take timely action to address multiple loss events that occur in succession during a short period of time (defined and explained in detail below). In connection therewith, the proposed rule change would (i) align the loss allocation rules of the three clearing agencies of The Depository Trust & Clearing Corporation (''DTCC''), namely The Depository Trust Company, National Securities Clearing Corporation (''NSCC''), and FICC (collectively, the ''DTCC Clearing Agencies''), so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies, (ii) increase transparency and accessibility of the loss allocation rules by enhancing their readability and clarity, (iii) amend language regarding FICC's use of MBSD Clearing Fund, and (iv) make conforming and technical changes.

(i) Background

Central counterparties (''CCPs'') play a key role in financial markets by mitigating counterparty credit risk on transactions between market participants. CCPs achieve this by providing guaranties to participants and, as a consequence, are typically exposed to credit risks that could lead to default losses. In addition, in performing its critical functions, a CCP could be exposed to non-default losses that are otherwise incident to the CCP's clearance and settlement business.

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[69] 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, FICC filed this proposed rule change as an 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, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined 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.*

A CCP's rulebook should provide a complete description of how losses would be allocated to participants if the size of the losses exceeded the CCP's pre-funded resources. Doing so provides for an orderly allocation of losses, and potentially allows the CCP to continue providing critical services to the market and thereby results in significant financial stability benefits. In addition, a clear description of the loss allocation process offers transparency and accessibility to the CCP's participants.

Current FICC Loss Allocation Process

As CCPs, FICC's Divisions' loss allocation processes are key components of their respective risk management processes. Risk management is the foundation of FICC's ability to guarantee settlement in each Division, as well as the means by which FICC protects itself and its members from the risks inherent in the clearance and settlement process. FICC's risk management processes must account for the fact that, in certain extreme circumstances, the collateral and other financial resources that secure FICC's risk exposures may not be sufficient to fully cover losses resulting from the liquidation of the portfolio of a member for whom a Division has ceased to act.[5]

The GSD Rules and the MBSD Rules each currently provide for a loss allocation process through which both FICC (by applying up to 25% 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 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. 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 amounts 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 loss allocation waterfall order:

First, 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

Second, 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.

Specifically, 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, as applicable, respective average daily Required Fund Deposit over the prior twelve (12) months. If a Tier One Netting Member or Tier One Member, as applicable, did not maintain a Required Fund Deposit for twelve (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, it will be required to eliminate such deficiency in order to satisfy its Required Fund Deposit amount. In addition to losses that may result from the closeout of the defaulting member's guaranteed positions, Tier One Netting Members or Tier One Members, as applicable, can also be assessed for non-default losses incident to each Division's clearance and settlement business, pursuant to current Section 7(f) of GSD Rule 4 and MBSD Rule 4.

The Rules of both Divisions currently provide that Tier Two Members are only subject to loss allocation to the extent they traded with the defaulting member and their trades resulted in a liquidation loss. FICC will assess Tier Two Members ratably based on their loss as a percentage of the entire remaining loss attributable to Tier Two Members.[6] 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.

Overview of the Proposed Rule Changes

A. Changes To Enhance Resiliency of GSD's and MBSD's Loss Allocation Processes

In order to enhance the resiliency of GSD's and MBSD's loss allocation processes, FICC proposes to change the manner in which each of the aspects of the loss allocation waterfall described above would be employed. GSD and MBSD would retain the current core loss allocation process following the application of the defaulting member's resources, *i.e.,* first, by applying FICC's corporate contribution, and second, by pro rata allocations to Tier One Netting Members or Tier One Members, as applicable, and Tier Two Members. However, GSD and MBSD would clarify or adjust certain elements and introduce certain new loss allocation concepts, as further discussed below. The proposal would also retain the types of losses that can be allocated to Tier One Netting

[5] GSD is permitted to cease to act for (i) a GSD Member pursuant to GSD Rule 22A (Procedures for When the Corporation Ceases to Act), (ii) a Sponsoring Member pursuant to Section 14 of GSD Rule 3A (Sponsoring Members and Sponsored Members), and (iii) a Sponsored Member pursuant to Section 13 of GSD Rule 3A (Sponsoring Members and Sponsored Members). MBSD is permitted to cease to act for an MBSD Member pursuant to MBSD Rule 17 (Procedures for When the Corporation Ceases to Act). GSD Rule 21 (Restrictions on Access to Services) and GSD Rule 22 (Insolvency of a Member), and MBSD Rule 14 (Restrictions on Access to Services) and MBSD Rule 16 (Insolvency of a Member) set out the circumstances under which FICC may cease to act for a member and the types of actions it may take. *Supra* note 4.

[6] 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 4.

Members or Tier One Members, as applicable, and Tier Two Members as stated above. In addition, the proposed rule change 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.

Accordingly, FICC is proposing five (5) key changes to enhance each Division's loss allocation process:

(1) Changing the calculation and application of FICC's 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% 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% of the FICC General Business Risk Capital Requirement.[7] FICC's General Business Risk Capital Requirement, as defined in FICC's Clearing Agency Policy on Capital Requirements,[8] 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.[9] The proposed Corporate Contribution (as defined below and in the proposed rule change) would be held in addition to FICC's General Business Risk Capital Requirement.

Currently, the Rules do not require FICC to contribute its retained earnings to losses and liabilities other than those from member defaults. Under the proposal, FICC would apply its corporate contribution to non-default losses as well. The proposed Corporate Contribution would apply to losses arising from Defaulting Member Events and Declared Non-Default Loss Events (as such terms are defined below and in the proposed rule change), and would be a mandatory contribution by FICC prior to any allocation of the loss among the applicable Division's members.[10] As proposed, if the Corporate Contribution is fully or partially used against a loss or liability relating to an Event Period (as defined below and in the proposed rule change) by one or both Divisions, the Corporate Contribution would be reduced to the remaining unused amount, if any, during the following two hundred fifty (250) Business Days in order to permit FICC to replenish the Corporate Contribution.[11] 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, *i.e.,* FICC would not have two separate Corporate Contributions, one 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 (as defined below and in the proposed rule change) of all members in that Division bears to the aggregate Average RFDs of all members in both Divisions.[12]

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, which is consistent with the current industry guidance that ''a CCP should identify the amount of its own resources to be applied towards losses arising from custody and investment risk, to bolster confidence that participants' assets are prudently safeguarded.''[13]

Under current Section 7(b) of GSD Rule 4 and Section 7(c) of MBSD Rule 4, FICC has the discretion to contribute amounts higher than the specified percentage of retained earnings, as determined by the Board of Directors, to any loss or liability incurred by FICC as result of the failure of a Defaulting Member to fulfill its obligations to FICC. This option would be retained and expanded under the proposal so that it would be clear that FICC can voluntarily apply amounts greater than the Corporate Contribution against any loss or liability (including non-default losses) of the Divisions, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

The proposed rule changes relating to the calculation and application of Corporate Contribution are set forth in proposed Sections 7 and 7a of GSD Rule 4 and Sections 7 and 7a of MBSD Rule 4, as further described below.

(2) Introducing an Event Period.

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 is proposing to introduce the concept of an ''Event Period'' to the GSD Rules and the MBSD Rules to address the losses and

[7] FICC calculates its General Business Risk Capital Requirement as the amount equal to the greatest of (i) an amount determined based on its general business profile, (ii) an amount determined based on the time estimated to execute a recovery or orderly wind-down of FICC's critical operations, and (iii) an amount determined based on an analysis of FICC's estimated operating expenses for a six (6) month period.

[8] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–FICC–2017–007).

[9] 17 CFR 240.17Ad–22(e)(15).

[10] The proposed rule 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.

[11] FICC believes that two hundred and fifth (250) Business Days would be a reasonable estimate of the time frame that FICC would require 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.

[12] FICC believes 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 represents the amount of risks that those members bring to FICC over the look-back period of seventy (70) Business Days.

[13] *See Resilience of central counterparties (CCPs): Further guidance on the PFMI,* issued by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, at 42 (July 2017), *available at www.bis.org/cpmi/publ/d163.pdf.*

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 in a period of ten (10) Business Days (''Event Period'') for purposes of allocating losses to Members of the respective Divisions in one or more rounds (as described below), subject to the limitations of loss allocation set forth in the proposed rule change and as explained below.[14] 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[15] for a GSD Defaulting Member and/or an 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 determination by the Board of Directors that the applicable loss or liability may be a significant and substantial loss or liability that may materially impair the ability of FICC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among the Tier One Netting Members or Tier One Members, as applicable, in order to ensure that FICC may continue to offer clearance and settlement services in an orderly manner (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 ten (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 (as defined below and in the proposed rule change) would apply for any withdrawing member, 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.

The proposed rule changes relating to the implementation of an Event Period are set forth in proposed Section 7 of GSD Rule 4 and Section 7 of MBSD Rule 4, as further described below.

(3) Introducing the concept of ''rounds'' and Loss Allocation Notice.

Pursuant to the proposed rule change, 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 (as defined below and in the proposed rule change) in accordance with proposed Section 7b of GSD Rule 4 or MBSD Rule 4.

Each loss allocation would be communicated to Tier One Netting Members or Tier One Members, as applicable, by the issuance of a Loss Allocation Notice (as defined below and in the proposed rule change). 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 (5) 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.[16]

The amount of any second or subsequent round cap may differ from the first or preceding round cap because there may be fewer Tier One Netting Members or Tier One Members, as applicable, in a second or subsequent round if Tier One Netting Members or Tier One Members, as applicable, elect to withdraw from membership with GSD or MBSD, as applicable, as provided in proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, following the first Loss Allocation Notice in any round.

For example, for illustrative purposes only, after the required Corporate Contribution, if FICC has a $5 billion loss determined with respect to an Event Period and the sum of Loss Allocation Caps for all Tier One Netting Members or Tier One Members, as applicable, subject to the loss allocation is $4 billion, the first round would begin when FICC issues the first Loss Allocation Notice for that Event Period. FICC could issue one or more Loss Allocation Notices for the first round until the sum of losses allocated equals $4 billion. Once the $4 billion is allocated, the first round would end and FICC would need a second round in order to allocate the remaining $1 billion of loss. FICC would then issue a Loss Allocation Notice for the $1 billion and this notice would be the first Loss Allocation Notice for the second round. The issuance of the Loss Allocation Notice for the $1 billion would begin the second round.

The proposed rule 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

[14] FICC believes that having a ten (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.

[15] *Supra* note 5.

[16] 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 4.

FICC believes that it is appropriate to shorten such time period from 10 days to five (5) 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 believes that five (5) 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.

each round. As proposed and as described further below, a Tier One Netting Member or Tier One Member, as applicable, could limit its loss allocation exposure to its Loss Allocation Cap by providing notice of its election to withdraw from membership within five (5) Business Days after the issuance of the first Loss Allocation Notice in any round.

The proposed rule changes relating to the implementation of ''rounds'' and Loss Allocation Notices are set forth in proposed Section 7 of GSD Rule 4 and Section 7 of MBSD Rule 4, as further described below.

(4) Implementing a revised ''look-back'' period to calculate a member's loss allocation pro rata share and its Loss Allocation Cap.

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 twelve (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). The Rules currently do not anticipate the possibility of more than one Defaulting Member Event or Declared Non-Default Loss Event in quick succession.

GSD and MBSD are proposing 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 (as described below and in the proposed rule change) to be equal to (i) the average of a member's Required Fund Deposit for the seventy (70) Business Days prior to the first day of the applicable Event Period (or such shorter period of time that the member has been a member) (''Average RFD'') divided by (ii) the sum of Average RFD amounts for all members that are subject to loss allocation in such round.

Additionally, GSD and MBSD are proposing that each member's maximum payment obligation with respect to any loss allocation round (the member's Loss Allocation Cap) be equal to the greater of (i) its Required Fund Deposit on the first day of the applicable Event Period or (ii) its Average RFD.

FICC believes that employing a revised look-back period of seventy (70) Business Days instead of twelve (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 recognizes that the current look-back period of twelve (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. A look-back period of seventy (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.

The proposed rule changes relating to the implementation of the revised look-back period are set forth in proposed Section 7 of GSD Rule 4 and Section 7 of MBSD Rule 4, as further described below.

(5) Capping withdrawing members' loss allocation exposure and related changes.

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 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. 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.[17] As discussed above, the proposed rule change would continue providing members the opportunity to limit their loss allocation exposure by offering withdrawal options; however, the cap on loss allocation would be calculated differently and the associated withdrawal process would also be modified as it relates to withdrawals associated with the loss allocation process. In particular, the proposed rule change would shorten the withdrawal notification period from 10 days to five (5) Business Days, as further described below.

As proposed, if a member provides notice of its withdrawal from membership, the maximum amount of losses it would be responsible for would be its Loss Allocation Cap,[18] 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.

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. To increase transparency of the timeframe under which FICC would require funds from members to satisfy their loss allocation obligations, FICC is proposing that members would receive two (2) Business Days' notice of a loss allocation, and members would be required to pay the requisite amount no later than the second Business Day following issuance of such notice.[19] Members would have five (5) Business Days [20] from the issuance of the first Loss Allocation Notice in any round of an Event Period to decide whether to withdraw from membership.

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.

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, as noted above, the amount of any second or subsequent

[17] Current Section 13 of GSD Rule 3 and MBSD Rule 3 requires 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. *Supra* note 4.

[18] If a member's Loss Allocation Cap exceeds the member's then-current Required Fund Deposit, it must still cover the excess amount.

[19] FICC believes that allowing members two (2) 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.

[20] *Supra* note 16.

round cap may differ from the first or preceding round cap because there may be fewer Tier One Netting Members or Tier One Members, as applicable, in a second or subsequent round if Tier One Netting Members or Tier One Members, as applicable, elect to withdraw from membership with GSD or MBSD, as applicable, as provided in proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, following the first Loss Allocation Notice in any round.

Pursuant to the proposed rule change, in order to avail itself of its Loss Allocation Cap, a Tier One Netting Member or Tier One Member, as applicable, would need to follow the requirements in proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, which would provide that the Tier One Netting Member or Tier One Member, as applicable, must: (i) 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 (ii) 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.

The proposed rule 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.

The proposed rule changes relating to capping withdrawing members' loss allocation exposure and related changes to the withdrawal process are set forth in proposed Sections 7 and 7b of GSD Rule 4 and Sections 7 and 7b of MBSD Rule 4, as further described below.

B. Changes To Align Loss Allocation Rules

The proposed rule 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, especially for firms that are participants of two or more DTCC Clearing Agencies. As proposed, the loss allocation waterfall and certain related provisions, *e.g.,* returning a former member's Clearing Fund, would be consistent across the DTCC Clearing Agencies to the extent practicable and appropriate. The proposed rule changes of FICC that would align loss allocation rules of the DTCC Clearing Agencies are set forth in proposed Sections 1, 5, 6, 10, and 11 of GSD Rule 4 and MBSD Rule 4, as further described below.

C. Clarifying Changes Relating to Loss Allocation

The proposed rule changes are intended to make the provisions in the Rules governing loss allocation more transparent and accessible to members. In particular, FICC is proposing the following changes relating to loss allocation to clarify members' obligations for Declared Non-Default Loss Events.

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.[21] The GSD Rules and the MBSD Rules currently permit FICC to apply Clearing Fund to non-default losses.[22] Section 5 of GSD Rule 4 and MBSD Rule 4 provides that the use of 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 Clearing Fund to such losses or liabilities is more limited under MBSD Rule 4 when compared to GSD Rule 4.[23] 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.[24]

If there is a failure of FICC following a non-default loss, such occurrence would affect members in much the same way as a failure of FICC following a Defaulting Member Event. Accordingly, FICC is proposing rule changes to enhance the provisions relating to non-default losses by clarifying members' obligations for such losses and aligning the non-default loss provisions in the GSD Rules and the MBSD Rules.

Specifically, for both the GSD Rules and the MBSD Rules, FICC is proposing enhancement of the governance around non-default losses that would trigger loss allocation to Tier One Netting Members or Tier One Members, as applicable, by specifying that the Board of Directors would have to determine that there is a non-default loss that may be a significant and substantial loss or liability that may materially impair the ability of FICC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among the Tier One Netting Members or Tier One Members, as applicable, in order to ensure that FICC may continue to offer clearance and settlement services in an orderly manner. The proposed rule 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 is proposing to better align the interest of FICC with those of its members by stipulating a mandatory Corporate Contribution apply to a Declared Non-Default Loss Event prior to any allocation of the loss among members, as described above. Additionally, FICC is proposing 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

[21] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[22] Arguably there is an ambiguity created by the first paragraph of Section 7 in both GSD Rule 4 and MBSD Rule 4, which suggests 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.

[23] 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 4.

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 4.

[24] Section 7(f) of GSD 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, ratably, in accordance with the respective amounts of their Average Required FICC Clearing Fund Deposits. *Supra* note 4.

Section 7(f) of 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 Members, ratably, in accordance with the respective amounts of their Average Required Clearing Fund Deposits. *Supra* note 4.

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.

The proposed rule changes relating to Declared Non-Default Loss Events and members' obligations for such events are set forth in proposed Section 7 of GSD Rule 4 and Section 7 of MBSD Rule 4, as further described below.

D. Amending Language Regarding FICC's Use of MBSD Clearing Fund

The proposed rule 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 believes 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 and imprecise, and should be replaced in their entirety. Specifically, FICC is proposing 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 is also proposing 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 proposed rule changes relating to FICC's use of MBSD Clearing Fund are set forth in proposed Section 5 of MBSD Rule 4, as further described below.

The foregoing changes as well as other changes (including a number of conforming and technical changes) that FICC is proposing in order to improve the transparency and accessibility of the Rules are described in detail below.

(ii) Detailed Description of the Proposed Rule Changes Related to Loss Allocation

A. Proposed Changes to GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation)

Overview of GSD Rule 4 and MBSD Rule 4

GSD Rule 4 and MBSD Rule 4 currently address Clearing Fund requirements and loss allocation obligations, as well as permissible uses of the Clearing Fund. These Rules address the various Clearing Fund calculations for each Division's Clearing Fund and set forth rights, obligations and other aspects associated with each Division's Clearing Fund, as well as each Division's loss allocation process. GSD Rule 4 and MBSD Rule 4 are each currently organized into 12 sections. Sections of these Rules that FICC is proposing to change are described below.

Section 1 of GSD Rule 4 and MBSD Rule 4

Currently, Section 1 of GSD Rule 4 and MBSD Rule 4 set forth the requirement that each GSD Netting Member and each MBSD Clearing Member make and maintain a deposit to the Clearing Fund at the minimum level set forth in the respective Rule 4 and note that the timing of such payment is set forth in another section of the respective Rule 4. Current Section 1 of the respective rule also provides that the deposits to the Clearing Fund will be held by FICC or its designated agents. Current Section 1 of MBSD Rule 4 also defines the term ''Transaction'' for purposes of MBSD Rule 4 and references a Member's obligation to replenish the deficit in its Required Fund Deposit if it is charged by FICC under certain circumstances.

FICC is proposing to rename the subheading of Section 1 of Rule 4 in both the GSD Rules and MBSD Rules from ''General'' to ''Required Fund Deposits'' and to restructure the wording of the provisions for clarity and readability.

Under the proposed rule change, Section 1 of GSD Rule 4 and Section 1 of MBSD Rule 4 would continue to have the same provisions as they relate to Netting Members or Clearing Members, as applicable, except for the following: (i) The language throughout the sections would be reorganized, streamlined and clarified, and (ii) language would be added regarding additional deposits maintained by the Netting Members or Clearing Members, as applicable, at FICC, and highlight for members that such additional deposits would be deemed to be part of the Clearing Fund and the member's Actual Deposit (as discussed below and as defined in the proposed rule change) but would not be deemed to be part of the member's Required Fund Deposit.

The proposed language regarding maintenance of a member's Actual Deposit would also make it clear that FICC will not be required to segregate such deposit, but shall maintain books and records concerning the assets that constitute each member's Actual Deposit.

In addition, FICC proposes a technical change to update a cross reference in Section 1 of GSD Rule 4 and MBSD Rule 4.

Furthermore, in Section 1 of MBSD Rule 4, FICC is proposing to move the definition of ''Transactions'' to proposed Section 2(a) of MBSD Rule 4, where the first usage of ''Transactions'' in MBSD Rule 4 appears. FICC is also proposing to delete the last sentence in Section 1 of MBSD Rule 4, which references a Member's obligation to replenish the deficit in its Required Fund Deposit if it is charged by FICC under certain circumstances, because it would no longer be relevant under the proposed rule change to Section 7 of MBSD Rule 4, as FICC would require members to pay their loss allocation amounts instead of charging their Required Fund Deposits for Clearing Fund losses.

Section 2 of GSD Rule 4 and MBSD Rule 4

Current Section 2 of GSD Rule 4 and MBSD Rule 4 set forth more detailed requirements pertaining to members' Required Fund Deposits. FICC is proposing to rename the subheadings in these sections from ''Required Fund Deposit'' to ''Required Fund Deposit Requirements'' in order to better reflect the purpose of this section.

In addition, FICC is proposing to expand the definition of ''Legal Risk'' in both the GSD and MBSD provisions (current Section 2(e) of GSD Rule 4 and Section 2(f) of MBSD Rule 4) by deleting references to Legal Risk being defined only in reference to a member's insolvency or bankruptcy, as FICC believes that Legal Risk may arise outside the context of an insolvency or bankruptcy event regarding a member, and FICC should be permitted to adequately protect itself in those non-insolvency/bankruptcy circumstances as well.

For better organization of Rule 4, FICC is also proposing to relocate the provision on minimum Clearing Fund cash requirements (current Section 2(b) of GSD Rule 4 and Section 2(d) of MBSD Rule 4) to the section in each of GSD Rule 4 and MBSD Rule 4 dealing specifically with the form of Clearing Fund deposits (proposed Section 3 of GSD Rule 4 and MBSD Rule 4). This would necessitate the re-lettering of the provisions in Section 2. In addition, as stated above, the provision regarding the definition of ''Transactions'' for purposes of MBSD Rule 4 would be moved to proposed Section 2(a) from current Section 1.

FICC is proposing technical changes to correct typographical errors in current Section 2 of GSD Rule 4.

Sections 3, 3a and 3b of GSD Rule 4 and MBSD Rule 4

Currently, Sections 3, 3a and 3b of GSD Rule 4 and MBSD Rule 4 address the permissible form of Clearing Fund deposits and contain detailed requirements regarding each form. FICC is proposing changes to improve the readability of these sections.

In addition, for better organization of the subject matter, FICC is proposing to move certain paragraphs from one section to another, including (i) moving clauses (b) and (d) in current Section 2 of GSD Rule 4 and MBSD Rule 4, respectively, to proposed Section 3 of GSD Rule 4 and MBSD Rule 4 and (ii) moving the last paragraph of current Section 3 in GSD Rule 4 and MBSD Rule 4 to proposed Section 3b of GSD Rule 4 and MBSD Rule 4.

Under the proposed rule change, FICC is also proposing to update the cash investment provision in Section 3a of GSD Rule 4 and MBSD Rule 4 to reflect the Clearing Agency Investment Policy adopted by FICC[25] and to define Clearing Fund Cash as (i) cash deposited by a Netting Member or Clearing Member, as applicable, as part of its Actual Deposit, (ii) the proceeds of (x) any loans made to FICC secured by the pledge by FICC of Eligible Clearing Fund Securities pledged to FICC or (y) any sales of Eligible Clearing Fund Securities pledged to FICC, (iii) cash receipts from any investment of, repurchase or reverse repurchase agreements relating to, or liquidation of, Clearing Fund assets, and (iv) cash payments on Eligible Letters of Credit. Lastly, FICC is proposing technical changes to correct typographical errors in current Section 3 of MBSD Rule 4 and current Section 3b of GSD Rule 4.

[25] *See* Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR–FICC–2016–005).

Section 4 of GSD Rule 4 and MBSD Rule 4

Currently, Section 4 of GSD Rule 4 and MBSD Rule 4 address the granting of a first priority perfected security interest by each Netting Member or Clearing Member, as applicable, in all assets and property placed by the member in the possession of FICC (or its agents acting on its behalf). FICC is not proposing any substantive changes to these sections except for streamlining the provisions for readability and clarity, and adding ''Actual Deposit'' as a defined term to refer to Eligible Clearing Fund Securities, funds and assets pledged to FICC to secure any and all obligations and liabilities of a Netting Member or a Clearing Member, as applicable, to FICC.

Section 5 of GSD Rule 4 and MBSD Rule 4

Currently, Section 5 of GSD Rule 4 and MBSD Rule 4 describe the use of each Division's Clearing Fund. FICC is proposing to rename the subheading of this section from ''Use of Deposits and Payments'' to ''Use of Clearing Fund'' to better reflect the purpose of the section.

Under the proposed rule change, FICC is also proposing changes to streamline this section for clarity and readability and to align the GSD Rules and MBSD Rules. Specifically, FICC is proposing to delete the first paragraph of current Section 5 of GSD Rule 4 and MBSD Rule 4 and replace it with clearer language that sets forth the permitted uses of each Division's Clearing Fund. Specifically, the proposed Section 5 of GSD Rule 4 and MBSD Rule 4 provides that each Division's Clearing Fund would only be used by FICC (i) to secure each member's performance of obligations to FICC, including, without limitation, each member's obligations with respect to any loss allocations as set forth in proposed Section 7 of GSD Rule 4 and MBSD Rule 4 and any obligations arising from a Cross-Guaranty Agreement pursuant to GSD Rule 41 or MBSD Rule 32, as applicable, or a Cross-Margining Agreement pursuant to GSD Rule 43, (ii) to provide liquidity to FICC to meet its settlement obligations, including, without limitation, through the direct use of cash in the GSD Clearing Fund or MBSD Clearing Fund, as applicable, or through the pledge or rehypothecation of pledged Eligible Clearing Fund Securities in order to secure liquidity, and (iii) for investment as set forth in proposed Section 3a of GSD Rule 4 and MBSD Rule 4.

The current first paragraph of Section 5 of GSD Rule 4 and MBSD Rule 4 provides that if FICC pledges, hypothecates, encumbers, borrows, or applies any part of the respective Division's Clearing Fund deposits to satisfy any liability, obligation, or liquidity requirements for more than thirty (30) days, FICC, at the Close of Business on the 30th day (or on the first Business Day thereafter) will consider the amount used as an actual loss to the respective Division's Clearing Fund and immediately allocate such loss in accordance with Section 7 of GSD Rule 4 or MBSD Rule 4, as applicable. As proposed, FICC would retain this provision conceptually but replace it with clearer and streamlined language that provides that each time FICC uses any part of the respective Division's Clearing Fund for more than 30 calendar days to provide liquidity to FICC to meet its settlement obligations, including, without limitation, through the direct use of cash in the Clearing Fund or through the pledge or rehypothecation of pledged Eligible Clearing Fund Securities in order to secure liquidity, FICC, at the Close of Business on the 30th calendar day (or on the first Business Day thereafter) from the day of such use, would consider the amount used but not yet repaid as a loss to the Clearing Fund incurred as a result of a Defaulting Member Event and immediately allocate such loss in accordance with proposed Section 7 of GSD Rule 4 or MBSD Rule 4, as applicable.

The proposed rule change also includes deleting 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 believes 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 and imprecise, and should be replaced in their entirety. Specifically, FICC is proposing 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 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 is also proposing 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.

In addition, FICC is proposing to delete the last paragraph in current Section 5 of GSD Rule 4 and MBSD Rule 4 because these paragraphs address the application of a member's deposits to the applicable Clearing Fund to cover the allocation of a loss or liability incurred by FICC. These paragraphs would no longer be relevant, because, under the proposed Section 7 of GSD Rule 4 and MBSD Rule 4 (discussed below), FICC would not apply the member's deposit to the Clearing Fund unless the member does not satisfy payment of its allocated loss amount within the required timeframe. These paragraphs also currently include provisions regarding other agreements, such as a Cross-Guaranty Agreement, that pertain to a Defaulting Member, and such provisions would now be covered by proposed Section 6 of GSD Rule 4 and MBSD Rule 4.

Section 6 of GSD Rule 4 and MBSD Rule 4

Currently, Section 6 of GSD Rule 4 and MBSD Rule 4 are reserved for future use. FICC is proposing to use this section for provisions relating to the application of deposits to the respective Division's Clearing Fund and other amounts held by FICC to a Defaulting Member's obligations.

FICC is proposing to add a subheading of ''Application of Clearing Fund Deposits and Other Amounts to Defaulting Members' Obligations'' to Section 6 of GSD Rule 4 and MBSD Rule 4. Under the proposed rule change, for better organization by subject matter, FICC is also proposing to relocate certain provisions to these sections from the respective current Section 7 of GSD Rule 4 and MBSD Rule 4, which addresses FICC's application of Clearing Fund deposits and other assets held by FICC securing a Defaulting Member's obligations to FICC.

For additional clarity and for consistency with the loss allocation rules of the other DTCC Clearing Agencies, FICC proposes to add a provision which makes it clear that, if FICC applies a Defaulting Member's Clearing Fund deposits, FICC may take any and all actions with respect to the Defaulting Member's Actual Deposits, including assignment, transfer, and sale of any Eligible Clearing Fund Securities, that FICC determines is appropriate.

Sections 7, 7a and 7b of GSD Rule 4 and MBSD Rule 4

Current Section 7 of GSD Rule 4 and MBSD Rule 4 contains FICC's current loss allocation waterfall for losses or liabilities incurred by FICC. With respect to any loss or liability incurred by FICC as the result of the failure of a Defaulting Member to fulfill its obligations to FICC, the loss allocation waterfall for each Division currently provides:

(i) Application of any Clearing Fund deposits and other collateral held by FICC securing a Defaulting Member's obligations to FICC and additional resources as are applicable to the Defaulting Member.

(ii) If a loss or liability remains after the application of the Defaulting Member's collateral and resources, FICC would apply up to 25% of FICC's existing retained earnings, or such higher amount as the Board of Directors determines.

(iii) If a loss or liability still remains after the application of the retained earnings, FICC would apply the loss or liability to members as follows:

(a) If the remaining loss or liability is attributable to Tier One Netting Members or Tier One Members, as applicable, then FICC will allocate such loss or liability to Tier One Netting Members or Tier One Members, as applicable, by assessing the Required Fund Deposit maintained by each such member an amount up to $50,000, in an equal basis per Tier One Netting Member or Tier One Member, as applicable.

(b) If the remaining loss or liability is attributable to Tier Two Members, then FICC will allocate such loss or liability to Tier Two Members based upon their trading activity with the Defaulting Member that resulted in a loss.

(iv) If there is any loss or liability that still remains after the application of (ii) and (iii) above that is attributable to Tier One Netting Members or Tier One Members, as applicable, then FICC will allocate such loss or liability among Tier One Netting Members or Tier One Members, as applicable, ratably based on the amount of each Tier One Netting Member's or Tier One Member's Required Fund Deposit and based on the average daily level of such deposit over the prior twelve (12) months (or such shorter period as may be available if the member has not maintained a deposit over such time period).

Current Section 7(f) of GSD Rule 4 and MBSD Rule 4 also provides that Other Losses shall be allocated among Tier One Netting Members or Tier One Members, as applicable, ratably in accordance with the respective amounts of each Tier One Netting Member's or Tier One Member's Required Fund Deposit and based on the average daily level of such deposit over the prior twelve (12) months (or such shorter period as may be available if the member has not maintained a deposit over such time period).

Currently, pursuant to Section 7(e) of GSD Rule 4, an Inter-Dealer Broker Netting Member, or a Non-IDB Broker with respect to activity in its Segregated Broker Account, will not be subject to an aggregate allocation loss for any single loss-allocation event that exceeds $5 million. FICC believes that it is appropriate for GSD to retain this cap under the proposed rule change because the Inter-Dealer Broker Netting Members are required to limit their business as provided in Section 8(e) of GSD Rule 3, which would in turn minimize the potential losses or liabilities that could be incurred by FICC from Inter-Dealer Broker Netting Members.[26] FICC believes that it is also appropriate for GSD to retain this cap under the proposed rule change for Non-IDB Brokers because their activity in their respective Segregated Broker Accounts would be subject to similar limitations as the Inter-Dealer Broker Netting Members. However, FICC is proposing a technical change to replace the term ''Segregated Broker Account'' with ''Segregated Repo Account,'' which is the correct term defined in GSD Rule 1.

Current Section 7(g) of GSD Rule 4 and MBSD Rule 4 further provides that if the Required Fund Deposit of the member being allocated the loss is not sufficient to satisfy its loss allocation obligation, the member is required to deliver to FICC an amount that is necessary to eliminate the deficiency 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. Under the current Rules, a member may elect to terminate its membership, which would limit its loss allocation to the amount of its Required Fund Deposit for the Business Day on which the notification of such loss allocation is provided to the member. If the member does not elect to terminate its membership and fails to satisfy its Required Fund Deposit within the timeframe specified in the Rules, FICC will cease to act generally with regard to such member pursuant to GSD Rules 21 and 22A or MBSD Rules 14

[26] Pursuant to Section 8(e) of GSD Rule 3, an Inter-Dealer Broker Netting Member is required to (A) limit its business to acting exclusively as a broker, (B) conduct all of its business in Repo Transactions with Netting Members, and (C) conduct at least 90 percent of its business in transactions that are not Repo Transactions with Netting Members. If an Inter-Dealer Broker Netting Member fails to comply with these requirements, then the Inter-Dealer Broker Netting Member shall be considered by FICC as a Dealer Netting Member. *Supra* note 4.

and 17, as applicable, and may take disciplinary action against such member pursuant to GSD Rule 48 or MBSD Rule 38, as applicable.

Current Section 7(h) of GSD Rule 4 and MBSD Rule 4 requires FICC to promptly notify members and the Commission of the amount involved and the causes if a Remaining Loss or Other Loss occurs. In addition, current Section 7(i) of GSD Rule 4 and MBSD Rule 4 also provides that any increase in Clearing Fund deposit as required by subsection (f) of current Section 2 of GSD Rule 4 or provisions of MBSD Rule 4 regarding special charges or other premiums will not be taken into account when calculating loss allocation based on a GSD Member's Average Required FICC Clearing Fund Deposit amount or an MBSD Member's Average Required Fund Deposit amount, as applicable, under current Section 7 of GSD Rule 4 and MBSD Rule 4.

Under the proposed rule change, FICC is proposing to rename the subheading of Section 7 of GSD Rule 4 and MBSD Rule 4 to ''Loss Allocation Waterfall, Off-the-Market Transactions.'' In addition, FICC is proposing to restructure its loss allocation waterfall as described below.

For better organization of the subject matter, FICC is proposing to move certain paragraphs from one section to another, including (i) relocating the last sentence of current Section 7(h) of GSD Rule 4 and MBSD Rule 4 regarding recovery of allocated losses or liabilities by FICC to the fifth paragraph of proposed Section 7 of GSD Rule 4 and MBSD Rule 4, (ii) relocating from current Section 7(a) of GSD Rule 4 and MBSD Rule 4 provisions which address FICC's application of Clearing Fund deposits and other assets held by FICC securing a Defaulting Member's obligations to FICC to proposed Section 6 of GSD Rule 4 and MBSD Rule 4, (iii) relocating from current Section 7 of GSD Rule 4 to proposed Section 6 of GSD Rule 4 the provision regarding FICC's right to treat certain payments to an FCO under a Cross-Margining Guaranty as a loss to be allocated, (iv) relocating the provisions in current Section 7(i) of GSD Rule 4 and MBSD Rule 4 regarding certain increases in Clearing Fund deposits not being taken into account when calculating loss allocation so that such provisions would come right after the loss allocation calculation provision, with an updated reference to proposed renumbered Sections 2(d) and 2(e) in GSD Rule 4 and MBSD Rule 4, respectively, and (v) relocating the provision regarding withdrawing members reapplying to become members in the second paragraph of current Section 7(g) of GSD Rule 4 and MBSD Rule 4 to come right after the paragraph regarding the election of a Tier One Netting Member or Tier One Member, as applicable, to withdraw from membership in proposed Section 7 of GSD Rule 4 and MBSD Rule 4. Furthermore, in order to enhance readability and clarity, FICC is proposing a number of changes to streamline the language in these provisions.

Under the proposal, Section 7 of GSD Rule 4 and MBSD Rule 4 would make clear that the loss allocation waterfall applies to losses and liabilities (i) relating to or arising out of a default of a member or (ii) otherwise incident to the clearance and settlement business of FICC (*i.e.,* non-default losses). The loss allocation waterfall would be triggered if FICC incurs a loss or liability relating to or arising out of the default of a Defaulting Member that is not satisfied pursuant to proposed Section 6 of GSD Rule 4 and MBSD Rule 4, as applicable, (a ''Defaulting Member Event'') or as a result of a Declared Non-Default Loss Event.

Under proposed Section 7 of GSD Rule 4 and MBSD Rule 4, the loss allocation waterfall would begin with a corporate contribution from FICC (''Corporate Contribution''), as is the case under the current Rules, but in a different form than under the current Section 7 of GSD Rule 4 and MBSD Rule 4 described above. Today, Section 7(b) of GSD Rule 4 and Section 7(c) of MBSD Rule 4 provide that, if FICC incurs any loss or liability as the result of the failure of a Defaulting Member to fulfill its obligations to FICC, FICC will contribute up to 25% of its existing retained earnings (or such higher amount as the Board of Directors shall determine), to such loss or liability; however, no corporate contribution from FICC is currently required for losses resulting other than those from Member impairments. Under the proposal, FICC would add a proposed new Section 7a to GSD Rule 4 and MBSD Rule 4 with a subheading of ''Corporate Contribution'' and define FICC's Corporate Contribution with respect to any loss allocation pursuant to proposed Section 7 of GSD Rule 4 or MBSD Rule 4, whether arising out of or relating to a Defaulting Member Event or a Declared Non-Default Loss Event, as an amount that is equal to fifty (50) percent of the amount calculated by FICC in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.[27] The proposed rule change would specify that FICC's General Business Risk Capital Requirement, as defined in FICC's Clearing Agency Policy on Capital Requirements,[28] 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.[29]

As proposed, if FICC applies the Corporate Contribution to a loss or liability arising out of or relating to one or more Defaulting Member Events or Declared Non-Default Loss Events relating to an Event Period, then for any subsequent Event Periods that occur during the two hundred fifty (250) Business Days thereafter,[30] the Corporate Contribution would be reduced to the remaining unused portion of the Corporate Contribution amount that was applied for the first Event Period. Proposed Section 7a of both GSD Rule 4 and MBSD Rule 4 would require FICC to notify members of any such reduction to the Corporate Contribution.

Proposed Section 7a to GSD Rule 4 and MBSD Rule 4 would also make clear that 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, *i.e.,* FICC would not have two separate Corporate Contributions, one for each Division. As proposed, 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. Under the proposal, 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 bears to the aggregate Average RFDs of all members in both Divisions.[31]

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 expand the application of its corporate contribution

[27] *Supra* note 7.

[28] *Supra* note 8.

[29] *Supra* note 9.

[30] *Supra* note 11.

[31] *Supra* note 12.

beyond losses and liabilities as the result of the failure of a Defaulting Member to fulfill its obligations to FICC. The proposed Corporate Contribution would apply to losses or liabilities relating to or arising out of Defaulting Member Events and Declared Non-Default Loss Events, and would be a mandatory loss contribution by FICC prior to any allocation of the loss among the applicable Division's members.

Current Section 7(b) of GSD Rule 4 and Section 7(c) of MBSD Rule 4 provide FICC the option 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 the result of the failure of a Defaulting Member to fulfill its obligations to FICC. This option would be retained and expanded under the proposal to also cover non-default losses. Proposed Section 7a of GSD Rule 4 and MBSD Rule 4 would provide that nothing in the Rules would prevent FICC from voluntarily applying amounts greater than the Corporate Contribution against any FICC loss or liability, whether a Defaulting Member Event or a Declared Non-Default Loss Event, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

Proposed Section 7 of GSD Rule 4 and MBSD Rule 4 would provide that FICC shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Defaulting Member Events and/or (ii) Declared Non-Default Loss Events that occur within an Event Period. The proposed rule change also provides that if losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, FICC would allocate such losses and liabilities to members, as described below.

As proposed, Section 7 of GSD Rule 4 and MBSD Rule 4 would retain the differentiation in allocating losses to Tier One Netting Members or Tier One Members, as applicable, and Tier Two Members. Specifically, as is the case today, losses or liabilities that arise out of or relate to one or more Defaulting Member Events would be attributable to Tier One Netting Members or Tier One Members, as applicable, and Tier Two Members, while losses or liabilities that arise out of or relate to one or more Declared Non-Default Loss Events would only be attributable to Tier One Netting Members or Tier One Members, as applicable. Tier Two Members would not be subject to loss allocation with respect to Declared Non-Default Loss Events.

Under the proposal, FICC would delete the provision in current Section 7(h) of GSD Rule 4 and MBSD Rule 4 that requires FICC to promptly notify members and the Commission of the amounts involved and the causes if a Remaining Loss or Other Loss occurs because such notification would no longer be necessary under the proposed rule change. Under the proposed rule change, FICC would notify members subject to loss allocation of the amounts being allocated to them in one or more Loss Allocation Notices for both Defaulting Member Events and Declared Non-Default Loss Events. As such, in order to conform to the proposed rule change, FICC is proposing to eliminate the notification to members regarding the amounts involved and the causes if a Remaining Loss or Other Loss occurs that is required under current Section 7(h) of GSD Rule 4 and MBSD Rule 4. FICC is also proposing to delete the notification to the Commission regarding the amounts involved and the causes if a Remaining Loss or Other Loss occurs as required in the same section. While as a practical matter, FICC would notify the Commission of a decision to loss allocate, FICC does not believe such notification needs to be specified in the Rules.

In addition, FICC is proposing to clarify the provision related to Off-the-Market Transactions so that it is clear that loss or liability of FICC in connection with the close-out or liquidation of an Off-the-Market Transaction in the portfolio of a Defaulting Member would be allocated to the Member that was the counterparty to such transaction.

Tier One Netting Members/Tier One Members:

For Tier One Netting Members or Tier One Members, as applicable, proposed Section 7 of GSD Rule 4 and MBSD Rule 4 would establish the concept of an ''Event Period'' to provide for a clear and transparent way of handling multiple loss events occurring in a period of ten (10) Business Days, which would be grouped into an Event Period.[32] As stated above, both Defaulting Member Events or Declared Non-Default Loss Events could occur within the same Event Period.

Under the proposal, an Event Period with respect to a Defaulting Member Event would begin on the day FICC notifies members that it has ceased to act for a Defaulting Member (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 FICC notifies members of the determination by the Board of Directors that the applicable loss or liability incident to the clearance and settlement business of FICC may be a significant and substantial loss or liability that may materially impair the ability of FICC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among 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 (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.

The proposed rule change to Section 7 of GSD Rule 4 and MBSD Rule 4 would clarify that all Tier One Netting Members or Tier One Members, as applicable, would be subject to loss allocation for losses and liabilities relating to or arising out of a Declared Non-Default Loss Event; however, in the case of losses and liabilities relating to or arising out of a Defaulting Member Event, only non-defaulting Tier One Netting Members or Tier One Members, as applicable, would be subject to loss allocation. In addition, FICC is proposing to clarify that after a first round of loss allocations with respect to an Event Period, only Tier One Netting Members or Tier One Members, as applicable, that have not submitted a Loss Allocation Withdrawal Notice in accordance with proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, would be subject to further loss allocations with respect to that Event Period. FICC is also proposing that FICC would notify Tier One Netting Members or Tier One Members, as applicable, subject to loss allocation of the amounts being allocated to them (''Loss Allocation Notice'') in successive rounds of loss allocations.

Under the proposed rule change, 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 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

[32] *Supra* note 14.

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.

As proposed, each loss allocation would be communicated to the Tier One Netting Members or Tier One Members, as applicable, by the issuance of a Loss Allocation Notice. 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 (5) 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.[33]

Proposed Section 7 of GSD Rule 4 and MBSD Rule 4 would also retain the requirement of loss allocation among Tier One Netting Members or Tier One Members, as applicable, if a loss or liability remains after the application of the Corporate Contribution, as described above. In contrast to the current Section 7 where FICC would assess the Required Fund Deposits of Tier One Netting Members or Tier One Members, as applicable, to allocate losses, under the proposal, FICC would require Tier One Netting Members or Tier One Members, as applicable, to pay their loss allocation amounts (leaving their Required Fund Deposits intact).[34] Loss allocation obligations would continue to be calculated based upon a Tier One Netting Member's or Tier One Member's, as applicable, pro rata share of losses and liabilities (although the pro rata share would be calculated differently than it is today), and Tier One Netting Members or Tier One Members, as applicable, would still retain the ability to voluntarily withdraw from membership and cap their loss allocation obligation (although the loss allocation obligation would also be calculated differently than it is today).

As proposed, each such member's pro rata share of losses and liabilities to be allocated in any round would be equal to (i) the member's Average RFD, divided by (ii) the sum of the Average RFD amounts of all members subject to loss allocation in such round. Each such member would have a maximum payment obligation with respect to any loss allocation round that would be equal to the greater of (x) its Required Fund Deposit on the first day of the applicable Event Period or (y) its Average RFD (such amount would be each member's ''Loss Allocation Cap''). Therefore, the sum of the Loss Allocation Caps of the members subject to loss allocation would constitute the maximum amount that FICC would be permitted to allocate in each round. FICC would retain the loss allocation limit of $5 million for Inter-Dealer Broker Netting Members, or Non-IDB Brokers with respect to activities in their Segregated Broker Accounts, as discussed above.

As proposed, Section 7 of GSD Rule 4 and MBSD Rule 4, would also provide that, to the extent that a Tier One Netting Member's or Tier One Member's, as applicable, Loss Allocation Cap exceeds such member's Required Fund Deposit on the first day of the applicable Event Period, FICC may, in its discretion, retain any excess amounts on deposit from the member, up to the Loss Allocation Cap of the Tier One Netting Member or Tier One Member, as applicable.

As proposed, Tier One Netting Members or Tier One Members, as applicable, would have two (2) Business Days after FICC issues a first round Loss Allocation Notice to pay the amount specified in any such notice.[35] On a subsequent round (*i.e.,* if the first round did not cover the entire loss of the Event Period because FICC was only able to allocate up to the round cap), these members would also have two (2) Business Days after notice by FICC to pay their loss allocation amounts (again subject to their Loss Allocation Caps), unless the members have notified (or will timely notify) FICC of their election to withdraw from membership with respect to a prior loss allocation round.

Under the proposal, if a Tier One Netting Member or Tier One Member, as applicable, fails to make its required payment in respect of a Loss Allocation Notice by the time such payment is due, FICC would have the right to proceed against such member as a Defaulting Member that has failed to satisfy an obligation in accordance with proposed Section 6 of GSD Rule 4 or MBSD Rule 4 described above. Members who wish to withdraw from membership would be required to comply with the requirements in proposed Section 7b of GSD Rule 4 and MBSD Rule 4, described further below. Specifically, proposed Section 7 of GSD Rule 4 and MBSD Rule 4 would provide that if, after notifying FICC of its election to withdraw from membership pursuant to proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, the Tier One Netting Member or Tier One Member, as applicable, fails to comply with the provisions of proposed Section 7b of GSD Rule 4 or MBSD Rule 4, as applicable, its notice of withdrawal would be deemed void and any further losses resulting from the applicable Event Period may be allocated against it as if it had not given such notice.

FICC is proposing to delete the provisions in the current GSD Rule 4 and MBSD Rule 4 that require FICC to assess the Required Fund Deposit maintained by each Tier One Netting Member or Tier One Member, as applicable, an amount up to $50,000, in an equal basis per such member, before allocating losses to Tier One Netting Members or Tier One Members, as applicable, ratably, in accordance with each such member's Required Fund Deposit and Average Required FICC Clearing Fund Deposit or Average Required Clearing Fund Deposit, as applicable. FICC believes that in the event of a loss or liability, this assessment is unlikely to alleviate the need for loss mutualization and creates an unnecessary administrative burden for each Division. FICC believes that moving straight to the loss mutualization described herein would be more practical. This proposed change would also streamline each Division's loss allocation waterfall processes and align such processes with those of the other DTCC Clearing Agencies.

Tier Two Members:

FICC is not proposing any substantive change to the provisions regarding Tier Two Members in current Section 7 of GSD Rule 4 and MBSD Rule 4, except to (i) add a subheading of ''Tier Two Members'' in the beginning of these provisions for ease of identification and (ii) add a paragraph that makes it clear that if a Tier Two Member fails to make

[33] *Supra* note 16.

[34] FICC believes that shifting from the two-step methodology of applying the respective Division's Clearing Fund and then requiring members to immediately replenish it to requiring direct payment would increase efficiency, while preserving the right to charge the member's Clearing Fund deposits in the event the member does not timely pay. Such a failure to pay would trigger recourse to the Clearing Fund deposits of the member under proposed Section 6 of GSD Rule 4 or MBSD Rule 4, as applicable. In addition, this change would provide greater stability for FICC in times of stress by allowing FICC to retain the respective Division's Clearing Fund, its critical pre-funded resource, while charging loss allocations.

[35] *Supra* note 19.

its required payment in respect of a Loss Allocation Notice by the time such payment is due, FICC would have the right to proceed against such member as a Defaulting Member that has failed to satisfy an obligation in accordance with proposed Section 6 of GSD Rule 4 or MBSD Rule 4 described above, consistent with the proposed change regarding Tier One Netting Members or Tier One Members, as applicable.

Withdrawal from Membership:

Proposed Section 7b of GSD Rule 4 and MBSD Rule 4 would include the provisions regarding withdrawal from membership currently covered by Section 7(g) of GSD Rule 4 and MBSD Rule 4. FICC believes that relocating the provisions on withdrawal from membership as it pertains to loss allocation, so that it comes right after the section on the loss allocation waterfall, would provide for the better organization of GSD Rule 4 and MBSD Rule 4. As proposed, the subheading for Section 7b of GSD Rule 4 and MBSD Rule 4 would read ''Withdrawal Following Loss Allocation.''

Currently, Section 7(g) of GSD Rule 4 and MBSD Rule 4 provides that a member may, pursuant to current Section 13 of GSD Rule 3 or MBSD Rule 3, notify FICC by the Close of Business on the Business Day on which a payment in an amount necessary to cover losses allocated to such member after the application of its Required Fund Deposit is due, of its election to terminate its membership and thereby avail itself of a cap on loss allocation, which is currently its Required Fund Deposit as fixed on the Business Day the pro rata charge loss allocation notification is provided to such member.

As stated above, under the proposed rule change, Section 7 of GSD Rule 4 and MBSD Rule 4 would provide that a Tier One Netting Member or a Tier One Member, as applicable, who wishes to withdraw from membership in respect of a loss allocation must provide notice of its election to withdraw (''Loss Allocation Withdrawal Notice'') within five (5) Business Days from the issuance of the first Loss Allocation Notice in any round.[36] In order to avail itself of its Loss Allocation Cap, such member would need to follow the requirements in proposed Section 7b of GSD Rule 4 and MBSD Rule 4, as applicable, which would provide that such member must: (i) Specify in its Loss Allocation Withdrawal Notice an effective date for withdrawal from membership, 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 (ii) 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.

FICC is proposing to include a sentence in proposed Section 7b of GSD Rule 4 and MBSD Rule 4 to make it clear that if the Tier One Netting Member or Tier One Member, as applicable, fails to comply with the requirements set forth in that section, its Loss Allocation Withdrawal Notice will be deemed void, and such member will remain subject to further loss allocations pursuant to proposed Section 7 of GSD Rule 4 and MBSD Rule 4 as if it had not given such notice.

For better organization of the subject matter, FICC is also proposing to move the provision that covers members' obligations to eliminate any deficiency in their Required Fund Deposits from the last sentence in the first paragraph of current Section 7(g) of GSD Rule 4 and MBSD Rule 4 to proposed Section 9 of GSD Rule 4 and MBSD Rule 4.

Section 8

As proposed, Section 8 of GSD Rule 4 and MBSD Rule 4 would cover the provisions on the return of a member's Clearing Fund deposit that are currently covered by Section 10 of GSD Rule 4 and MBSD Rule 4. Proposed Section 8's subheading would be ''Return of Members' Clearing Fund Deposits.''

FICC is proposing changes to streamline and enhance the clarity and readability of this section, including adding language to clarify that a member's obligations to FICC would include both matured as well as contingent obligations, but is otherwise retaining the substantive provisions of this section.

Section 9

FICC is proposing to renumber Section 8 of GSD Rule 4 and MBSD Rule 4, which addresses the timing of members' payment of the respective Division's Clearing Fund. Under the proposal, this section would be renumbered as Section 9 of GSD Rule 4 and MBSD Rule 4 and retitled to ''Initial Required Fund Deposit and Changes in Members' Required Fund Deposits'' to better reflect the subject matter of this section.

Currently, Section 8 of GSD Rule 4 and MBSD Rule 4 requires members to satisfy any increase in their Required Fund Deposit requirement within such time as FICC requires. FICC is proposing to clarify that at the time the increase becomes effective, the member's obligations to FICC will be determined in accordance with the increased Required Fund Deposit whether or not the member has satisfied such increased amount. FICC is also proposing to add language to clarify that (i) if FICC applies a GSD Netting Member's or an MBSD Clearing Member's Clearing Fund deposits as permitted pursuant to GSD Rule 4 or MBSD Rule 4, as applicable, FICC may take any and all actions with respect to the GSD Netting Member's or MBSD Clearing Member's Actual Deposit, including assignment, transfer, and sale of any Eligible Clearing Fund Securities, that FICC determines is appropriate, and (ii) if such application results in any deficiency in the GSD Netting Member's or MBSD Clearing Member's, as applicable, Required Fund Deposit, such member shall immediately replenish it. These clarifications are consistent with the Divisions' rights as set forth in current Sections 4 and 11 of GSD Rule 4 and current Sections 4 and 11 of MBSD Rule 4. In addition, the provisions in clause (ii) of the previous sentence is consistent with the requirements in current Section 1 of GSD Rule 4 and MBSD Rule 4 that a member must maintain its Required Fund Deposit.

As discussed above, for better organization of the subject matter, FICC is proposing to move the provision that covers members' obligations to eliminate any deficiency in their Required Fund Deposits from the last sentence in the first paragraph of current Section 7(g) of GSD Rule 4 and MBSD Rule 4 to proposed Section 9 of GSD Rule 4 and MBSD Rule 4.

Section 10

Currently, Section 9 of GSD Rule 4 and MBSD Rule 4 addresses situations where a member has excess on deposit in the Clearing Fund (*i.e.,* amounts above its Required Fund Deposit). The current provision provides that FICC will notify a member of any Excess Clearing Fund Deposit as FICC determines from time to time. Upon the request of a member, FICC will return an excess amount requested by a member that follows the formats and timeframe established by FICC for such request. The current provision makes clear that FICC may, in its discretion, withhold any or all of a member's Excess Clearing Fund Deposit (i) if the member has an outstanding payment obligation to FICC, (ii) if FICC determines that the member's anticipated activity over the next 90 calendar days may reasonably be expected to be materially different than the prior 90 calendar days, or (iii) if the

[36] *Supra* note 16.

member has been placed on the Watch List. Section 9 also makes clear that the return of an Excess Clearing Fund Deposit to any member is subject to (i) such return of Excess Clearing Fund Deposit not being done in a manner that would cause the member to violate any other section of the Rules, (ii) such return not reducing the amount of the member's Cross-Guaranty Repayment Deposit to the Clearing Fund below the amount required to be maintained by the member pursuant to GSD Rule 41 or MBSD Rule 32, as applicable, and (iii) with respect to GSD Members only, such return not reducing the amount of a GSD Member's Cross-Margining Repayment Deposit to the Clearing Fund below the amount required to be maintained by the GSD Member pursuant to GSD Rule 43.

FICC is proposing to renumber Section 9 as Section 10 for both GSD Rule 4 and MBSD Rule 4 and to retitle its subheading to ''Excess Clearing Fund Deposits'' to better reflect the subject matter of the provisions. FICC is not proposing any changes to this section except to streamline and clarify the provisions as well as to align GSD Rule 4 and MBSD Rule 4, including adding a sentence to clarify that nothing in this section limits FICC's rights under Section 7 of GSD Rule 3 or Section 6 of MBSD Rule 3, as applicable.

Section 11

Current Section 11 of GSD Rule 4 and MBSD Rule 4 provides that FICC has certain rights with respect to the Clearing Fund. FICC is proposing to add a sentence which would make it clear that GSD Rule 4 or MBSD Rule 4, as applicable, would govern in the event of any conflict or inconsistency between such rule and any agreement between FICC and any member. FICC believes that this proposed change would facilitate members' understanding of the Rules and their obligations thereunder. It would also align the Rules with the Rules and Procedures of NSCC so as to provide consistent treatment for firms that are members of both FICC and NSCC.[37] Furthermore, in order to enhance the readability and clarity, FICC is proposing a number of changes to streamline the language in this section.

(ii) Other Proposed Rule Changes

FICC is proposing changes to GSD Rule 1 (Definitions), GSD Rule 3 (Ongoing Membership Requirements), GSD Rule 3A (Sponsoring Members and Sponsored Members), GSD Rule 3B (Centrally Cleared Institutional Triparty Service), GSD Rule 13 (Funds-Only Settlement), GSD Rule 18 (Special Provisions for Repo Transactions), GSD Rule 21A (Wind-Down of a Netting Member), GSD Rule 22B (Corporation Default), GSD Rule 41 (Cross Guaranty Agreements), GSD Rule 43 (Cross-Margining Arrangements), GSD Board Interpretations and Statements of Policy, and GSD Interpretive Guidance with Respect to Watch List Consequences. FICC is also proposing changes to MBSD Rule 1 (Definitions), MBSD Rule 3 (Ongoing Membership Requirements), MBSD Rule 5 (Trade Comparison), MBSD Rule 11 (Cash Settlement), MBSD Rule 17A (Corporation Default), MBSD Rule 32 (Cross Guaranty Agreements), and MBSD Interpretive Guidance with Respect to Watch List Consequences. FICC is proposing changes to these Rules in order to conform them with the proposed changes to GSD Rule 4 and MBSD Rule 4, as applicable, as well as to make certain technical changes to these Rules, as further described below.

Adding Defined Terms

Specifically, FICC is proposing to add the following defined terms to GSD Rule 1, in alphabetical order: Actual Deposit, Average RFD, CCIT Member Termination Date, CCIT Member Voluntary Termination Notice, Clearing Fund Cash, Corporate Contribution, Declared Non-Default Loss Event, Defaulting Member Event, Event Period, Excess Clearing Fund Deposit, Former Sponsored Members, Lender, Loss Allocation Cap, Loss Allocation Notice, Loss Allocation Withdrawal Notice, Sponsored Member Termination Date, Sponsored Member Voluntary Termination Notice, Sponsoring Member Termination Date, Sponsoring Member Voluntary Termination Notice, Termination Date, and Voluntary Termination Notice.

FICC is also proposing to add the following defined terms to MBSD Rule 1, in alphabetical order: Actual Deposit, Average RFD, Clearing Fund Cash, Corporate Contribution, Declared Non-Default Loss Event, Defaulting Member Event, Event Period, Excess Clearing Fund Deposit, Lender, Loss Allocation Cap, Loss Allocation Notice, Loss Allocation Withdrawal Notice, Termination Date, and Voluntary Termination Notice.

Technical Changes

In addition, FICC is proposing technical changes (i) to delete the defined term ''The Corporation'' in GSD Rule 1 and replace it with ''Corporation'' in GSD Rule 1, (ii) to correct cross-references in Section 8 of MBSD Rule 5 and the definition of ''Legal Risk'' in GSD Rule 1, (iii) to update references to sections that would be changed under this proposal in Section 12 of GSD Rule 3, Sections 10 and 12(a) of GSD Rule 3A, Section 3(f) of GSD Rule 18, GSD Rule 21A, Sections 3(a), 3(b) and 4 of GSD Rule 41, Section 6 of GSD Rule 43, GSD Interpretive Guidance with Respect to Watch List Consequences, Sections 11, 14, and 15 of MBSD Rule 3, Section 3(b) of MBSD Rule 32, and MBSD Interpretive Guidance with Respect to Watch List Consequences, (iv) to update the reference to a subheading that would be changed under this proposal in Section 7 of GSD Rule 3B, and (v) to delete a reference to the Cross-Margining Agreement between FICC and NYPC that is no longer in effect. FICC believes that these proposed technical changes would ensure the Rules remain clear and accurate, which would in turn allow Members to readily understand their obligations under the Rules.

Voluntary Termination

FICC is also proposing changes to the voluntary termination provisions in GSD Rule 3, GSD Rule 3A, GSD Rule 3B, and MBSD Rule 3 in order to ensure that termination provisions in the GSD Rules and MBSD Rules, whether voluntary or in response to a loss allocation, are consistent with one another to the extent appropriate.

Currently, the voluntary termination provisions in GSD Rule 3, GSD Rule 3A, GSD Rule 3B, and MBSD Rule 3 generally provide that a member may elect to terminate its membership by providing FICC with 10 days written notice of such termination. Such termination will not be effective until accepted by FICC, which shall be evidenced by a notice to FICC's members announcing the member's termination and the effective date of the termination, and that the terminating member will no longer be eligible to submit transactions to FICC as of the date of termination. This provision also provides that a member's voluntary termination of membership shall not affect its obligations to FICC.

Where appropriate, FICC is proposing changes to align the voluntary termination provisions in Section 13 of GSD Rule 3, Sections 2(i) and 3(e) of GSD Rule 3A, Section 6 of GSD Rule 3B, and Section 14 of MBSD Rule 3 with the proposed new Section 7b of GSD Rule 4 and MBSD Rule 4, given that they all address termination of membership. Specifically, in Section 13 of GSD Rule 3, FICC is proposing that when a GSD

[37] *See* Section 12 of Rule 4 in NSCC's Rules and Procedures, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

Member elects to voluntarily terminate its membership by providing FICC a written notice of such termination (''Voluntary Termination Notice''), the GSD Member must specify in its Voluntary Termination Notice an effective date of its withdrawal from membership (''Termination Date''); provided, however, if the GSD Member is terminating its membership in GSD (*i.e.,* not terminating its membership just in the Netting System), the Termination Date shall not be prior to the scheduled final settlement date of any remaining obligation owed by the GSD Member to FICC as of the time such Voluntary Termination Notice is submitted to FICC, unless otherwise approved by FICC.

The proposed change to Section 13 of GSD Rule 3 would also provide that if any trade is submitted to FICC either by the withdrawing GSD Member or its authorized submitter that is scheduled to settle on or after the Termination Date, the GSD Member's Voluntary Termination Notice would be deemed void and the GSD Member would remain subject to the GSD Rules as if it had not given such notice. Furthermore, FICC is proposing to add a sentence to Section 13 of GSD Rule 3 to refer GSD Members to Section 8 of GSD Rule 4 regarding provisions on the return of a GSD Member's Clearing Fund deposit and to specify that if an Event Period were to occur after a Tier One Netting Member has submitted its Voluntary Termination Notice but prior to the Termination Date, in order for such Tier One Netting Member to benefit from its Loss Allocation Cap pursuant to Section 7 of GSD Rule 4, the Tier One Netting Member would need to comply with the provisions of Section 7b of GSD Rule 4 and submit a Loss Allocation Withdrawal Notice, which notice, upon submission, would supersede and void any pending Voluntary Termination Notice previously submitted by the Tier One Netting Member.

Parallel changes are also being proposed to Section 2(i) of GSD Rule 3A and Section 14 of MBSD Rule 3 with additional language in Section 2(i) of GSD Rule 3A and Section 14 of MBSD Rule 3 making it clear that the acceptance by FICC of a member's Voluntary Termination Notice shall be no later than ten (10) Business Days after the receipt of such notice from the member, in order to provide certainty to members as well as to align these sections with the current Section 13 of GSD Rule 3.

With respect to Section 3(e) of GSD Rule 3A and Section 6 of GSD Rule 3B, changes similar to the ones described above in the previous paragraph are also being proposed for Sponsored Members and CCIT Members, except there would be no references to the return of a member's Clearing Fund deposits and to Loss Allocation Caps because they would not apply to these member types. In addition, FICC is proposing a technical change in Section 6 of GSD Rule 3B to reflect a defined term that would be changed under this proposal.

Other MBSD Proposed Rule Changes

FICC is proposing to delete Section 15 of MBSD Rule 3 because FICC believes that this section is akin to a loss allocation provision and therefore would no longer be necessary under the proposed rule change, as the scenarios envisioned by Section 15 of MBSD Rule 3 would be governed by the proposed loss allocation provisions in MBSD Rule 4.

Other GSD Proposed Rule Changes

Under the proposal, Section 12(c) of GSD Rule 3A would also be revised to incorporate the concept of the Loss Allocation Cap and to reference the applicable proposed sections in GSD Rule 4 that would apply when a Sponsoring Member elects to terminate its status as a Sponsoring Member.

FICC is also proposing to delete an Interpretation of the Board of Directors of the Government Securities Clearing Corporation (the predecessor to GSD), which currently clarifies certain provisions of GSD Rule 4 and the extent to which the GSD Clearing Fund and other required deposits of GSD Netting Members may be applied to a loss or liability incurred by FICC. FICC is proposing this deletion because this interpretation would no longer be necessary following the proposed rule change. This is because the proposed rule change to GSD Rule 4 would cover the extent to which the GSD Clearing Fund and other collateral or assets of GSD Netting Members would be applied to a loss or liability incurred by FICC.

Other GSD Proposed Rule Changes and MBSD Proposed Rule Changes

FICC is proposing changes to Section 11 of GSD Rule 4 and MBSD Rule 4. Specifically, FICC is proposing to replace ''letters of credit'' with ''Eligible Letters of Credit,'' which is already a defined term in the Rules. In addition, FICC is proposing to specify that a reference to 30 days means 30 calendar days.

FICC is proposing to delete ''Remaining Loss'' and ''Other Loss'' in Sections 12(a) and 12(b) of GSD Rule 3A, Section 5 of GSD Rule 13, Section 4 of GSD Rule 41, Section 6 of GSD Rule 43, Section 9(o) of MBSD Rule 11, and Section 4 of MBSD Rule 32 because these terms would no longer be used under the proposed GSD Rule 4 and MBSD Rule 4, and to add clarifying language that conforms to the proposed changes to GSD Rule 4 and MBSD Rule 4.

In addition, FICC is proposing changes to GSD Rule 22B (Corporation Default) and MBSD Rule 17A (Corporation Default). FICC is proposing to relocate the interpretational parenthetical in each rule to come right after the reference to GSD Rule 22A and MBSD Rule 17. FICC is proposing this change because, in the event of a Corporation Default, the portfolio of each GSD Member or MBSD Member, as applicable, would be closed out in the same way as the portfolio of a GSD Defaulting Member or MBSD Defaulting Member, *i.e.,* by applying the close out procedures of GSD Rule 22A (Procedures for When the Corporation Ceases to Act) or MBSD Rule 17 (Procedures for When the Corporation Ceases to Act), as applicable. In addition, in the proposed GSD Rule 22B and MBSD Rule 17A, FICC is proposing to add a reference to the loss allocation provisions of GSD Rule 4 and MBSD Rule 4 and delete references to specific sections of GSD Rule 4 and MBSD Rule 4, because those sections are being modified under the proposed rule change.

Member Outreach

Beginning in August 2017, FICC conducted outreach to Members in order to provide them with advance notice of the proposed changes. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

Implementation Timeframe

Pending Commission approval, FICC expects to implement this proposal promptly. Members would be advised of the implementation date of this proposal through issuance of a FICC Important Notice.

2. Statutory Basis

FICC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [38] and Rules 17Ad–22(e)(13) and 17Ad–

[38] 15 U.S.C. 78q–1(b)(3)(F).

22(e)(23)(i),[39] each as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the Rules be 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 each Division or for which it is responsible.[40] The proposed rule changes to (1) modify the calculation and application of FICC's corporate contribution, (2) introduce an Event Period, (3) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the member withdrawal process in connection with the loss allocation process, and (4) implement a revised ''look-back'' period to calculate a member's loss allocation obligation and its Loss Allocation Cap, taken together, are intended to enhance the overall resiliency of each Division's loss allocation process.

By modifying the calculation of FICC's corporate contribution, FICC would apply a mandatory fixed percentage of its General Business Risk Capital Requirements (as compared to the current Rules which provide for ''up to'' a percentage of retained earnings), which would provide greater transparency and accessibility to members as to how much FICC would contribute in the event of a loss or liability. By modifying the application of FICC's corporate contribution to apply to Declared Non-Default Loss Events, in addition to Defaulting Member Events, on a mandatory basis, FICC would expand the application of its corporate contribution beyond losses and liabilities from member defaults, which would better align the interests of FICC with those of its respective Division's members by stipulating a mandatory application of the Corporate Contribution to a Declared Non-Default Loss Event prior to any allocation of the loss among Tier One Netting Members or Tier One Members, as applicable. Taken together, these proposed rule changes would enhance the overall resiliency of each Division's loss allocation process by enhancing the calculation and application of FICC's Corporate Contribution, which is one of the key elements of each Division's loss allocation process. Moreover, by providing greater transparency and accessibility to members, as stated above, the proposed rule changes regarding the Corporate Contribution, including the proposed replenishment period and proposed allocation of FICC Corporate Contribution between Divisions, would allow members to better assess the adequacy of each Division's loss allocation process.

By introducing the concept of an Event Period, FICC would be able to group Defaulting Member Events and Declared Non-Default Loss Events occurring in a period of ten (10) Business Days for purposes of allocating losses to members. FICC believes that the Event Period would provide a defined structure for the loss allocation process 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 market dislocation episode. Having this structure would enhance the overall resiliency of FICC's loss allocation process because FICC would be better equipped to address losses that may arise from multiple Defaulting Member Events and/or Declared Non-Default Loss Events that arise in quick succession. Moreover, the proposed Event Period structure would provide certainty for members concerning their maximum exposure to mutualized losses with respect to such events.

By introducing the concept of ''rounds'' (and accompanying Loss Allocation Notices) and applying this concept to the timing of loss allocation payments and the member withdrawal process in connection with the loss allocation process, FICC would (i) set forth a defined amount that it would allocate to members during each round (*i.e.,* the round cap), (ii) advise members of loss allocation obligation information as well as round information through the issuance of Loss Allocation Notices, and (iii) provide members with the option to limit their loss allocation exposure after the issuance of the first Loss Allocation Notice in each round. These proposed rule changes would enhance the overall resiliency of FICC's loss allocation process because they would enable FICC to continue the loss allocation process in successive rounds until all of FICC's losses are allocated and enable FICC to identify continuing members for purposes of calculating subsequent loss allocation obligations in successive rounds. Moreover, the proposed rule changes would define for members a clear manner and process in which they could cap their loss allocation exposure to FICC.

By implementing a revised ''look-back'' period to calculate a member's loss allocation obligations and its Loss Allocation Cap, FICC would be able to capture a full calendar quarter of the member's activities and smooth out the impact from any abnormalities and/or arbitrariness that may have occurred. By determining a member's loss allocation obligations and its Loss Allocation Cap based on the greater of its Required Fund Deposit or the average thereof over a look-back period, FICC would be able to calculate a member's pro rata share of losses and liabilities based on the amount of risk that the member brings to FICC. These proposed rule changes would enhance the overall resiliency of each Division's loss allocation process because they would align a member's loss allocation obligation and its Loss Allocation Cap with the amount of risk that the member brings to FICC.

Taken together, the foregoing proposed rule changes would establish a stronger (for all the reasons discussed above) and clearer loss allocation process for each Division, which FICC believes would allow each Division to take timely action to address losses. The ability to timely address losses would allow each Division to continue to meet its clearance and settlement obligations, especially in circumstances that may involve a series of substantially contemporaneous loss events. Therefore, FICC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

By deleting certain vague and imprecise limiting language that could be interpreted as impairing 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, the proposed rule change to amend FICC's permitted use of MBSD Clearing Fund would enhance FICC's ability to ensure that it can continue its operations and clearance settlement services in an orderly manner in the event that it would be necessary or appropriate for FICC to access MBSD Clearing Fund deposits to address losses, liabilities or liquidity needs to meet its settlement obligations. Therefore, FICC believes that this proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(13) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure each

[39] 17 CFR 240.17Ad–22(e)(13) and (e)(23)(i).

[40] 15 U.S.C. 78q–1(b)(3)(F).

Division has the authority and operational capacity to take timely action to contain losses and continue to meet its obligations.[41] As described above, the proposed rule changes to (1) modify the calculation and application of FICC's corporate contribution, (2) introduce an Event Period, (3) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the member withdrawal process in connection with the loss allocation process, and (4) implement a revised ''look-back'' period to calculate a member's loss allocation obligation and its Loss Allocation Cap, taken together, are designed to enhance the resiliency of each Division's loss allocation process. Having a resilient loss allocation process would help ensure that each Division can effectively and timely address losses relating to or arising out of either the default of one or more members or one or more non-default loss events, which in turn would help each Division contain losses and continue to meet its clearance and settlement obligations. Therefore, FICC believes that the proposed rule changes to enhance the resiliency of each Division's loss allocation process are consistent with Rule 17Ad–22(e)(13) under the Act.

Rule 17Ad–22(e)(23)(i) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of each Division's default rules and procedures.[42] The proposed rule changes to (i) align the loss allocation rules of the DTCC Clearing Agencies, (ii) improve the overall transparency and accessibility of the provisions in the Rules governing loss allocation and (iii) make conforming and technical changes, would not only ensure that each Division's loss allocation rules are, to the extent practicable and appropriate, consistent with the loss allocation rules of other DTCC Clearing Agencies, but also would help to ensure that each Division's loss allocation rules are transparent and clear to members. Aligning the loss allocation rules of the DTCC Clearing Agencies would provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and clear loss allocation rules would enable members to better understand the key aspects of each Division's default rules and procedures and provide members with increased predictability and certainty regarding their exposures and obligations. As such, FICC believes that the proposed rule changes to align the loss allocation rules of the DTCC Clearing Agencies as well as to improve the overall transparency and accessibility of each Division's loss allocation rules are consistent with Rule 17Ad–22(e)(23)(i) under the Act.

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule changes to enhance the resiliency of each Division's loss allocation process would impact competition.[43] As described above, the proposed rule changes to (1) modify the calculation and application of FICC's corporate contribution, (2) introduce an Event Period, (3) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the member withdrawal process in connection with the loss allocation process, and (4) implement a revised ''look-back'' period to calculate a member's loss allocation obligation and its Loss Allocation Cap, taken together, are intended to enhance the overall resiliency of each Division's loss allocation process, and would apply equally to all members. While the proposed rule changes would amend the manner in which FICC's corporate contribution and loss allocation are calculated and applied, such proposed rule changes would maintain FICC's current core loss allocation waterfall in the case of a loss relating to or arising out of the default of a member for whom FICC has ceased to act following application of the defaulting member's resources, *i.e.,* FICC's corporate contribution and loss allocation among members. With respect to a loss or liability arising from a non-default loss event, the proposed rule changes clarify FICC's contribution to such loss and liability, but, as with losses and liabilities arising from a member default event, the proposed rule changes would maintain the loss mutualization requirement under the current GSD Rules and MBSD Rules. While the calculation of the loss obligations associated with non-default losses would change under the proposal, the FICC Divisions would maintain this aspect of the loss allocation waterfall (*i.e.,* loss mutualization among members for non-default losses). Based on the foregoing, FICC believes that these proposed rule changes to enhance the resiliency of each Division's loss allocation process would not have any impact on competition.

FICC does not believe the proposed rule change to delete certain vague and imprecise limiting language regarding FICC's use of MBSD Clearing Fund would impact competition.[44] This proposed rule change would enhance FICC's ability to ensure that it can continue its operations and clearance and settlement services in an orderly manner in the event that it would be necessary or appropriate for FICC to access MBSD Clearing Fund deposits to address losses, liabilities or liquidity needs to meet its settlement obligations. In the event that it would be necessary or appropriate for FICC to access MBSD Clearing Fund deposits, FICC's use of MBSD Clearing Fund deposits would remain subject to the parameters in the proposed rule that limit FICC's use of MBSD Clearing Fund, *i.e.,* (A) to secure each MBSD Member's performance of obligations to FICC, (B) to provide liquidity to FICC to meet its settlement obligations, and (C) for certain investments. FICC does not believe that FICC's utilization of MBSD Clearing Fund under these parameters would impact competition. Specifically, FICC does not believe that using MBSD Clearing Fund to secure each MBSD Member's performance of obligations to FICC and for certain investments would have an impact on the MBSD Members because the fund and/or investments are still being held by FICC. With respect to FICC's use of MBSD Clearing Fund pursuant to parameter (B), FICC believes that there may be an impact on MBSD Members if FICC uses the MBSD Clearing Fund for more than 30 calendar days. This is because FICC would then consider the amount of MBSD Clearing Fund used but not yet repaid as a loss to the MBSD Clearing Fund incurred as a result of a Defaulting Member Event and immediately allocate such loss in accordance with the proposal. However, because loss allocation among the MBSD Members would be based on the Average RFDs of those MBSD Members, any loss allocation among MBSD Members would affect MBSD Members in proportion to the amount of risks they bring to FICC, as represented by their Average RFDs. Based on the foregoing, FICC does not believe that the proposed deletion of the limiting language regarding FICC's use of MBSD Clearing Fund would have any impact on competition.

FICC also does not believe that the proposed rule changes to (i) align the

[41] 17 CFR 240.17Ad–22(e)(13).

[42] 17 CFR 240.17Ad–22(e)(23)(i).

[43] 15 U.S.C. 78q–1(b)(3)(I).

[44] *Id.*

loss allocation rules of the DTCC Clearing Agencies, (ii) increase the transparency and accessibility of provisions in the Rules governing loss allocation, and (iii) make conforming and technical changes, would impact competition.[45] These changes would apply equally to all members. Alignment of the loss allocation rules of the DTCC Clearing Agencies are intended to increase the consistency of the Rules with the rules of other DTCC Clearing Agencies in order to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and accessible provisions in the Rules governing loss allocation are intended to improve the readability and clarity of the Rules regarding the loss allocation process. Making conforming and technical changes to ensure the Rules remain clear and accurate would facilitate members' understanding of the Rules and their obligations thereunder. As such, FICC believes that these proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–FICC–2017–022 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–FICC–2017–022. 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2017–022 and should be submitted on or before January 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00075 Filed 1–5–18; 8:45 am]

BILLING CODE 8011–01–P

[45] *Id.*

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee will hold a public meeting on Thursday, January 11, 2018 at 9:30 a.m.

PLACE: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC.

STATUS: The meeting will begin at 9:30 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: On December 15, 2017, the Commission published notice of the Committee meeting (Release No. 34–82338) indicating that the meeting is open to the public (except during that portion of the meeting reserved for an administrative work session during lunch) and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will focus on liquidity in the bond markets as well as various administrative items.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Brent J. Fields,

Secretary.

[FR Doc. 2018–00212 Filed 1–4–18; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82431; File No. SR–FICC–2017–021]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change To Adopt a Recovery & Wind-Down Plan and Related Rules

January 2, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2017, Fixed Income Clearing Corporation (''FICC'') 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 clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of FICC would adopt the Recovery & Wind-down Plan of FICC (''R&W Plan'' or ''Plan''). The R&W Plan would be maintained by FICC in compliance with Rule 17Ad–22(e)(3)(ii) under the Act by providing plans for the recovery and orderly wind-down of FICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described below.[4]

The proposed rule change would also (1) amend FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'') in order 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; (2) 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 (3) amend Rule 1 of the Electronic Pool Netting (''EPN'') Rules of MBSD (''EPN Rules'') in order 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.[5] Each of the proposed rules is referred to herein as a ''Proposed Rule,'' and are collectively referred to as the ''Proposed Rules.''

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;[6] and (3) provide FICC with the legal basis to implement those provisions of the R&W Plan when necessary, as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC is proposing to adopt the R&W Plan to be used by the Board and management of FICC 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 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''); (ii) an analysis of FICC's intercompany arrangements and an existing link to another financial market infrastructures (''FMIs''); (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 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 comprehensive, effective, and transparent, how the tools provide appropriate 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.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that FICC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, FICC filed this proposed rule change as an 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, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at http://www.dtcc.com/legal/sec-rule-filings.*

[4] 17 CFR 240.17Ad–22(e)(3)(ii).

[5] 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. The Rules and the EPN Rules are *available at http://www.dtcc.com/legal/rules-and-procedures.*

[6] 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.

develop further supporting internal guidelines and materials that may provide operationally for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to FICC were its governance structure and the nature of the markets within which FICC operates. As a result of these considerations, 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 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''),[7] (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,[8] and (iii) the process for the allocation of losses among Members, as provided in Rule 4 of the GSD Rules and Rule 4 of the MBSD Rules.[9] 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.[10] 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. Significantly, the Proposed Rules would provide Members and Limited Members with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly FICC's strategy for winding down and transferring its business, and would provide FICC with the legal basis to implement those aspects of the R&W Plan.

FICC R&W Plan

The R&W Plan is intended to be used by the 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. 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 description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Members and Limited Members with appropriate transparency into these features.

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 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 be maintained by FICC in compliance with Rule 17Ad–22(e)(3)(ii) under the Act[11] by providing plans for the recovery and orderly wind-down of FICC.

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. This overview section would provide a context for the R&W Plan by describing FICC's business, organizational structure and critical links to other entities. 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.

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 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.

The 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.[12] Pursuant to this arrangement, GSD offsets each cross-margining participant's residual margin amount (based on related positions) at GSD against the offsetting residual margin amounts of the participant (or its affiliate) at CME. GSD and CME may then reduce the amount of collateral that they collect to reflect the offsets between the cross-margining participant's positions at GSD and its (or

[7] *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).

[8] *See id.*

[9] *See* GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 5. FICC is proposing changes to GSD Rule 4 and MBSD Rule 4, and other related rules, regarding allocation of losses in a separate filing submitted simultaneously with this filing (File Nos. SR–FICC–2017–022 and SR–FICC–2017–806, referred to collectively herein as the ''Loss Allocation Filing''). FICC expects the Commission to review both proposals together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

[10] 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.

[11] 17 CFR 240.17Ad–22(e)(3)(ii).

[12] *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 5.

its affiliate's) positions at CME. This section of the Plan, identifying and briefly describing FICC's established links, would 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 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 would provide an analysis of the potential systemic impact from a service disruption, and 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 consideration as to (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, as such, 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 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. GSD's critical services would include, for example, its Real-Time Trade Matching (''RTTM®'') service,[13] its services related to netting and settlement of submitted trades for Netting Members,[14] the Auction Takedown service,[15] and the Repurchase Agreement Netting Service.[16] MBSD's critical services would include, for example, its RTTM® service,[17] its netting service for to-be-announced (''TBA'') transactions,[18] its Electronic Pool Notification service,[19] and its pool netting and settlement.[20] The R&W Plan would also include a non-exhaustive list of FICC services that are not deemed critical.

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. As discussed further below, 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 Plan would describe the governance structure of both DTCC and FICC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The 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 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 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, and, due to FICC's critical role in the markets in which it operates, oversight of FICC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[21] The 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 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 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 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 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.[22] More generally, the 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. As described further below, both the Recovery Plan

[13] *See* GSD Rule 5 (Comparison System), GSD Rule 6A (Bilateral Comparison), GSD Rule 6B (Demand Comparison), and GSD Rule 6C (Locked-In Comparison), *supra* note 5.

[14] *See* GSD Rule 11 (Netting System), GSD Rule 12 (Securities Settlement), and GSD Rule 13 (Funds-Only Settlement), *supra* note 5.

[15] *See* GSD Rule 6C (Locked-In Comparison) and GSD Rule 17 (Netting and Settlement of Netting-Eligible Auction Purchases), *supra* note 5.

[16] *See* GSD Rule 7 (Repo Transactions), GSD Rule 11 (Netting System), GSD Rule 18 (Special Provisions for Repo Transactions), GSD Rule 19 (Special Provisions for Brokered Repo Transactions), and GSD Rule 20 (Special Provisions for GCF Repo Transactions), *supra* note 5.

[17] *See* MBSD Rule 5 (Trade Comparison), *supra* note 5.

[18] *See* MBSD Rule 6 (TBA Netting), *supra* note 5.

[19] *See* EPN Rules, *supra* note 5.

[20] *See* MBSD Rule 8 (Pool Netting System) and MBSD Rule 9 (Pool Settlement with the Corporation), *supra* note 5.

[21] The charter of the Board Risk Committee is *available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.*

[22] The 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; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the 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.

FICC Recovery Plan

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. As each event that could lead to a financial loss could be unique in its circumstances, 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, as described in greater detail below. In all cases, FICC 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 in order to best protect FICC, the Members, and the markets in which it operates.

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 stressed market phase, (3) a phase commencing with FICC's decision to cease to act for a Member or Affiliated Family of Members,[23] and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to FICC's decision to cease to act for a Member (referred to in the R&W Plan as a ''defaulting Member,'' and the event as a ''Member default'') pursuant to the applicable Rules.[24]

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. The Recovery Plan would discuss the management of credit/market risk and liquidity exposures together, because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. FICC manages these risk exposures collectively to limit their overall impact on FICC and the memberships of the Divisions. 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.[25] FICC 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.[26]

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. The Recovery Plan would 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, 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;[27] 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.[28]

The Recovery Plan would describe some of the indicators of the ''stressed 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

[23] The Plan would define an ''Affiliated Family'' of Members as a number of affiliated entities that are all Members of either GSD or MBSD.

[24] *See* GSD Rule 21 (Restrictions on Access to Services) and MBSD Rule 14 (Restrictions on Access to Services), *supra* note 5.

[25] *See* GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 5. FICC's 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 also* 17 CFR 240.17Ad–22(e)(4).

[26] 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 Nos. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR–DTC–2017–004, SR–NSCC–2017–005, SR–FICC–2017–008); 81194 (July 24, 2017), 82 FR 35241 (July 28, 2017) (SR–DTC–2017–004, SR–NSCC–2017–005, SR–FICC–2017–008).

[27] FICC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). *See* Securities Exchange Act Release Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006).

[28] *See supra* note 26.

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.[29] 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. For example, in connection with managing its market risk during this phase, FICC would, pursuant to the applicable Division's Rules, (1) monitor and assess the adequacy of the GSD and MBSD Clearing Fund resources; (2), when necessary and appropriate pursuant to the applicable Division's Rules, assess and collect additional margin requirements; and (3) follow its operational procedures to liquidate the defaulting Member's portfolio. 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, which would include, for example, adjusting its strategy for closing out the defaulting Member's portfolio or seeking additional liquidity resources. 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 and MBSD Rule 4, as each are proposed to be amended by the Loss Allocation Filing, would provide that losses be satisfied first by applying a ''Corporate Contribution,'' and then, if necessary, by allocating remaining losses to non-defaulting Members.[30]

The ''recovery phase'' of the Crisis Continuum would describe actions that FICC may take to avoid entering into a wind-down of its business. In order to provide for an effective and timely recovery, the Recovery Plan would describe two stages of this phase: (1) A recovery corridor, during which FICC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase; and (2) the recovery phase, 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.'' [31]

FICC expects that significant deterioration of liquidity resources would cause it to enter the recovery corridor stage of this phase, and, as such, the actions it may take at this stage would be aimed at replenishing those resources. Circumstances that could cause it to enter the recovery corridor may include, for example, a rapid and material change in market prices or substantial intraday activity volume by the defaulting Member, neither of which are mitigated by intraday margin calls, or subsequent defaults by other Members or Affiliated Families during a compressed time period. 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 metrics referred to as ''Corridor Indicators.''

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. Corridor Indicators would include, for example, effectiveness and speed of FICC's efforts to close out the portfolio of the defaulting Member, and an impediment to the availability of its financial resources. 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,[32] as well as management escalations required to authorize those steps. Because FICC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the Corridor Indicators. As such, 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 stage between one day and two weeks. This estimate is based on historical data observed in past

[29] *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 5.

[30] *See supra* note 9. The Loss Allocation Filing proposes to amend GSD Rule 4 and MBSD Rule 4 to 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 (50%) of the ''General Business Risk Capital Requirement,'' which is calculated pursuant to the Capital Policy and 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 compliance with Rule 17Ad–22(e)(15) under the Act. *See also supra* note 7; 17 CFR 240.17Ad–22(e)(15).

[31] The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an ''Event Period'' as the ten (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, as described in greater detail in that filing. The proposed GSD Rule 4 and MBSD Rule 4 would define a ''round'' as a series of loss allocations relating to an Event Period, and would provide 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'' (as defined in the proposed GSD Rule 4 and MBSD Rule 4) of those Members included in the round. *See supra* note 9.

[32] The Corridor Actions that would be identified in the Plan are 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 Plan for the Corridor Indicator to which the action relates.

Member defaults, the results of simulations of Member defaults, and periodic liquidity analyses conducted by FICC. The actual length of a recovery corridor would vary based on actual market conditions observed on the date and time FICC enters the recovery corridor stage of the Crisis Continuum, 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, and would state that the available tools related to allocation of losses would only be used in this and subsequent phases of the Crisis Continuum.[33] 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 throughout the Crisis Continuum to address liquidity shortfalls if they arise. 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, for example uncommitted bank loans, 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.

As stated above, 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, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within 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 Corridor Indicators applicable to that phase of the Crisis Continuum, and, in most cases, by the measures and metrics that are assigned to those Corridor Indicators, as described above. Each of these indicators would have a defined review period and 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 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.

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 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 Plan would first identify some of the risks FICC faces that could lead to these losses, which include, for example, the business and profit/loss risks of unexpected declines in revenue or growth of expenses; 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 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.[34] The Recovery Plan would also describe FICC's approach to financial risk and capital management. The 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 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,[35] (b) the Corporate Contribution,[36] 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 and MBSD Rule 4.[37]

The 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.[38] Finally the Plan would discuss how FICC would apply its resources to address losses resulting from a non-default event, including the

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[33] As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to GSD Rule 4 and MBSD Rule 4, described therein, reference is made to that filing and the details are not repeated here. *See supra* note 9.

[34] 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. *See* 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. *See* 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).

[35] *See supra* note 30.

[36] *See supra* note 30.

[37] *See supra* note 9.

[38] *See supra* note 7.

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 and MBSD Rule 4.[39]

The 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. This Proposed Rule would 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, as described in greater detail below.

The 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''), making 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 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 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. 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.

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 appropriate incentives to Members and minimize negative impact on Members and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad–22(e)(3)(ii) under the Act.[40] FICC's analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

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. While FICC believes that, given the comprehensive nature of the recovery tools, such event is extremely unlikely, as described in greater detail below, 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. Federal Bankruptcy Code,[41] and (3) after effectuating this transfer, FICC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. FICC believes that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that FICC's critical services will be available to the market as long as there are Members in good standing, and (2) minimizing disruption to the operations of Members and financial markets generally that might be caused by FICC's failure.

In describing the transfer approach to FICC's Wind-down Plan, the 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. As such, a business reorganization or ''bail-in'' of debt approach would be unlikely to mitigate significant losses. Additionally, FICC's 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.'' 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.[42] The Wind-down Plan would identify some of the indicators that it has entered this Runway Period, which would include, for example, successive Member defaults, significant Member retirements thereafter, and FICC's inability to replenish its financial resources following the liquidation of the portfolio of the defaulting Member(s).

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 Plan, FICC believes 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, 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

[39] *See supra* note 9.

[40] Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14).

[41] 11 U.S.C. 1101 *et seq.*

[42] 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 make clear that FICC cannot predict the willingness of Members to do so.

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. Federal Bankruptcy Code.[43] As stated above, 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. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, FICC, except to the extent expressly provided in the court's order.[44]

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.[45] 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.[46] 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. As such, and as stated above, the Wind-down Plan does not contemplate FICC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated. The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of FICC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of FICC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) FICC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether FICC could safely stabilize the business and protect its value without seeking bankruptcy protection, and FICC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions FICC or DTCC may take to prepare for wind-down in the period before FICC experiences any financial distress, (2) actions FICC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions FICC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the 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.[47] 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.[48]

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, and are discussed below.

Proposed Rules

In connection with the adoption of the R&W Plan, FICC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules

[43] *See* 11 U.S.C. *et seq.*

[44] *See id.* at 363.

[45] 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, 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.

[46] *See supra* note 5.

[47] *See supra* note 7.

[48] *See supra* note 7.

would facilitate the execution of the R&W Plan and would provide Members and Limited Members with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both FICC and Members. The Proposed Rules also provide a legal basis to these aspects of the Plan.

GSD Rule 22D and MBSD Rule 17B (Wind-down of the Corporation)

The proposed GSD Rule 22D and MBSD Rule 17B (collectively, ''Wind-down Rule'') would be adopted by both Divisions 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. The Wind-down Rule would 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. 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.

Wind-down Trigger. First, the Proposed Rule would 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 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.

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'').

Treatment of Pending Transactions. The Wind-down Rule would also authorize the Board to provide for the settlement of pending transactions of either Division prior to the Transfer Time, so long as the applicable Division's Corporation Default Rule has not been triggered. For example, the Proposed Rule would provide the Board with the ability to, if it deems practicable, based on FICC's resources at that time, allow pending transactions of either Division to complete prior to the transfer of FICC's business to a Transferee. 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. 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.

The Proposed Rule would 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.

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.

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, the proposed Wind-down Rule would 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.[49]

Comparability Period. 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. Further to this goal, 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. 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.

Subordination of Claims Provisions and Miscellaneous Matters. The proposed Wind-down Rule would also 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.,* such firms are 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). This provision is designed to incentivize Members to participate in FICC's recovery efforts.[50]

The proposed Wind-down Rule would address other ex-ante matters, including provisions providing that its Members, Limited Members and Settling Banks (1) will assist and cooperate with FICC to effectuate the transfer of FICC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant FICC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by FICC pursuant to the Proposed Rule.

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. 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,'' including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which FICC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. 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. 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.

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.

Proposed Changes to GSD Rules, MBSD Rules, and EPN Rules

In order to incorporate the Proposed Rules into the Rules and the EPN Rules,

[49] 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.

[50] 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.

FICC is also proposing 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) Rule 1 of the EPN Rules. As shown on Exhibit 5b, these proposed changes would clarify that certain types of Limited Members, as identified in those rules, would be subject to the Proposed Rules.

2. Statutory Basis

FICC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes that the R&W Plan, each of the Proposed Rules and the other proposed changes to the Rules and the EPN Rules are consistent with Section 17A(b)(3)(F) of the Act,[51] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii) under the Act,[52] and the R&W Plan is consistent with Rule 17Ad–22(e)(15)(ii) under the Act,[53] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of FICC be 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 FICC or for which it is responsible.[54] The Recovery Plan and the proposed Force Majeure Rule would promote the prompt and accurate clearance and settlement of securities transactions by providing FICC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools FICC may use to address and minimize losses to both FICC and Members. The Recovery Plan and the proposed Force Majeure Rule would provide FICC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible by enabling actions that would address and minimize losses.

The Wind-down Plan and the proposed Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would also 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. The Wind-down Plan and the proposed Wind-down Rule would collectively establish a framework for the transfer and orderly wind-down of FICC's business. These proposals would establish clear mechanisms for the transfer of FICC's critical services and membership. By doing so, the Wind-down Plan and this Proposed Rule are designed to facilitate the continuity of FICC's critical services and enable Members and Limited Members to maintain access to FICC's services through the transfer of the Divisions' memberships in the event the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of FICC's critical clearance and settlement services, FICC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of FICC's business, FICC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.

Finally, the other proposed changes to the Rules and the EPN Rules would clarify the application of the Proposed Rules to certain types of Limited Members and would enable these Limited Members to readily understand their rights and obligations. As such, FICC believes these proposed changes would enable Limited Members that are governed by the applicable rules to have a better understanding of those rules and, thereby, would assist in promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, FICC believes the R&W Plan, each of the Proposed Rules, and the other proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[55]

Rule 17Ad–22(e)(3)(ii) under the Act requires FICC 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.[56] The R&W Plan and each of the Proposed Rules are designed to meet the requirements of Rule 17Ad–22(e)(3)(ii).[57]

The R&W Plan would be maintained by FICC in compliance with Rule 17Ad–22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of FICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.[58] Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that FICC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would address measures that FICC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan 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 would set forth clear mechanisms for the transfer of the memberships of both Divisions and FICC's business, and would be designed to facilitate continued access to FICC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of FICC in order to facilitate continuous access to FICC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of FICC. Therefore, FICC believes the R&W Plan would provide 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, and, as such, meets the

[51] 15 U.S.C. 78q–1(b)(3)(F).

[52] 17 CFR 240.17Ad–22(e)(3)(ii).

[53] *Id.* at 240.17Ad–22(e)(15)(ii).

[54] 15 U.S.C. 78q–1(b)(3)(F).

[55] *Id.*

[56] 17 CFR 240.17Ad–22(e)(3)(ii).

[57] *Id.*

[58] *Id.*

requirements of Rule 17Ad–22(e)(3)(ii).[59]

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Members and Limited Members with transparency regarding the material provisions of the Plan, and provide FICC with a legal basis for implementation of those provisions. As such, FICC also believes the Proposed Rules meet the requirements of Rule 17Ad–22(e)(3)(ii).[60]

FICC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Members to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide FICC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. FICC also believes the recovery tools are effective, as FICC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Members are bound by the Rules through their membership agreements with FICC, and the Rules are adopted pursuant to a framework established by Rule 19b–4 under the Act,[61] providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which FICC is a party, as described above. Further, as many of the tools are embedded in FICC's ongoing risk management practices or are embedded into its predefined default-management procedures, FICC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are, or are proposed to be, included in the Rules, which are publicly available. FICC believes the recovery tools also provide appropriate incentives to Members, as they are designed to control the amount of risk they present to FICC's clearance and settlement system. Members' financial obligations to FICC, particularly their required deposits to the applicable Division's Clearing Fund, are measured by the risk posed by the Members' activity in FICC's systems, which incentivizes them to manage that risk which would correspond to lower financial obligations. Finally, FICC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to FICC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, FICC believes that the recovery tools that would be identified and described in its Recovery Plan, including the authority provided to it in the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad–22(e)(3)(ii).[62]

Therefore, FICC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii).[63]

Rule 17Ad–22(e)(15)(ii) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential general business losses so that FICC can continue operations and services as a going concern if those losses materialize, including by holding LNA 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.[64] While the Capital Policy addresses how FICC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs 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 would also 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 sufficient amount of LNA that FICC should 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, FICC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad–22(e)(15)(ii).[65]

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe the proposal would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act.[66] The proposal would apply uniformly to all Members and Limited Members. FICC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Member default scenario or non-default event. FICC is not proposing to alter the standards or requirements for becoming or remaining a Member, or otherwise using its services. FICC also does not propose to change either Division's methodology for calculation of margin or their respective Clearing Fund contributions. The proposal is intended to (1) address the risk of loss events and identify the tools and resources available to it to withstand and recover from such events, so that it can restore normal operations, and (2) provide a framework for its orderly wind-down and the transfer of its business in the event those recovery tools do not restore FICC to financial viability, as described herein.

The R&W Plan and each of the Proposed Rules have been developed and documented in order to satisfy applicable regulatory requirements, as discussed above.

With respect to the Recovery Plan, the proposal generally reflects FICC's existing tools and existing internal procedures. Existing tools that would have a direct impact on the rights, responsibilities or obligations of Members are reflected in the existing Rules or are proposed to be included in the Rules. Accordingly, the Recovery Plan and the proposed Force Majeure Rule are intended to provide a roadmap, define the strategy and identify the tools available to FICC in connection with its recovery efforts. By proposing to enhance FICC's existing internal management and its regulatory compliance related to its recovery efforts, FICC does not believe the Recovery Plan or the proposed Force

[59] *Id.*

[60] *Id.*

[61] *Id.* at 240.19b–4.

[62] *Supra* note 40.

[63] 17 CFR 240.17Ad–22(e)(3)(ii).

[64] 17 CFR 240.17Ad–22(e)(15)(ii).

[65] *Id.*

[66] 15 U.S.C. 78q–1(b)(3)(I).

Majeure Rule would have any impact, or impose any burden, on competition.

With respect to the Wind-down Plan and the proposed Wind-down Rule, which facilitate the execution of the Wind-down Plan, the proposal would operate to effect the transfer of all eligible Members and Limited Members of both Divisions to the Transferee, and would not prohibit any market participant from either bidding to become the Transferee or from applying for membership with the Transferee. The proposal also would not prohibit any Member or Limited Member from withdrawing from FICC prior to the Transfer Time, as is permitted under the Rules today, or from applying for membership with the Transferee. Therefore, as the proposal would treat each similarly situated Member identically under the Wind-down Plan and this Proposed Rule, FICC does not believe the Wind-down Plan or the proposed Wind-down Rule would have any impact, or impose any burden, on competition.

FICC does not believe that the other proposed changes to the Rules and the EPN Rules would have any impact on competition because these proposed changes to incorporate the Proposed Rules into the Rules and the EPN Rules are technical clarifications, which would not, on their own, change FICC's current practices or the rights or obligations of the Members or EPN Users.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

While FICC has not solicited or received any written comments relating to this proposal, FICC has conducted outreach to its Members in order to provide them with notice of the proposal. FICC will notify the Commission of any written comments received by FICC.

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 clearing agency 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–FICC–2017–021 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–FICC–2017–021. 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2017–021 and should be submitted on or before January 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00079 Filed 1–5–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82432; File No. SR–DTC–2017–021]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Adopt a Recovery & Wind-Down Plan and Related Rules

January 2, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2017, The Depository Trust Company (''DTC'') 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 clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of DTC would (1) adopt the Recovery & Wind-down Plan of DTC (''R&W Plan'' or ''Plan''); and (2) amend the Rules, By-Laws and Organization Certificate of DTC (''Rules'') [4] in order 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'').

The R&W Plan would be maintained by DTC in compliance with Rule 17Ad–22(e)(3)(ii) under the Act by providing

[67] 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, DTC filed this proposed rule change as an 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, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is available at *http://www.dtcc.com/legal/sec-rule-filings.*

[4] Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/DTC_rules.pdf.*

plans for the recovery and orderly wind-down of DTC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described below.[5] 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, as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DTC is proposing to adopt the R&W Plan to be used by the Board and 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 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''); (ii) an analysis of DTC's intercompany arrangements and critical links to other financial market infrastructures (''FMIs''); (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 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 comprehensive, effective, and transparent, how the tools provide appropriate 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.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that DTC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools 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 operationally for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to DTC were its governance structure and the nature of the markets within which DTC operates. As a result of these considerations, many of the tools available to DTC that would be described in the R&W Plan are DTC's existing, business-as-usual risk management and default management tools, which would continue to be applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe DTC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity (''LNA'') to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements (''Capital Policy''),[6] (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,[7] and (iii) the process for the allocation of losses among Participants as provided in Rule 4.[8] 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.[9] 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

[5] 17 CFR 240.17Ad–22(e)(3)(ii).

[6] *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).

[7] *See id.*

[8] *See* Rule 4 (Participants Fund and Participants Investment), *supra* note 4. DTC is proposing changes to Rule 4 regarding allocation of losses in a separate filing submitted simultaneously with this filing (File Nos. SR–DTC–2017–022 and SR–DTC–2017–804, referred to collectively herein as the ''Loss Allocation Filing''). DTC expects the Commission to review both proposals together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

[9] 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.

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. Significantly, the Proposed Rules would provide Participants with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly DTC's strategy for winding down and transferring its business, and would provide DTC with the legal basis to implement those aspects of the R&W Plan.

DTC R&W Plan

The R&W Plan is intended to be used by the 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. 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 description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Participants with appropriate transparency into these features.

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 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 be maintained by DTC in compliance with Rule 17Ad–22(e)(3)(ii) under the Act[10] by providing plans for the recovery and orderly wind-down of DTC.

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. This overview section would provide a context for the R&W Plan by describing DTC's business, organizational structure and critical links to other entities. 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.

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 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.

The 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. In general, these links are either ''inbound'' or ''issuer'' links, in which the other FMI is a Participant and/or a Pledgee and maintains one or more accounts at DTC, or ''outbound'' or ''investor'' links in which DTC maintains one or more accounts at another FMI. Key FMIs with which DTC maintains critical links include CDS Clearing and Depository Services Inc. (''CDS''), the Canadian CSD, with participant links in both directions; Euroclear Bank SA/NV (''EB'') for cross-border collateral management services; and The Options Clearing Corporation (''OCC'') and the Federal Reserve Bank of New York (''FRBNY''), each of which is both a Participant and a Pledgee. The critical link for the U.S. marketplace is the relationship between DTC and NSCC, through which continuous net settlement (''CNS'') transactions are completed by settlement at DTC, and DTC acts as settlement agent for NSCC for end-of-day funds settlement.[11] This section of the Plan, identifying and briefly describing DTC's established links, would 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 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 would provide an analysis of the potential systemic impact from a service disruption, and 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 consideration as to (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 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. Such critical services would include, for example, MMIs and Commercial Paper Processing,[12] Mandatory and Voluntary Corporate Actions,[13] Cash and Stock Distributions,[14] and End of Day Net Money Settlement.[15] The R&W Plan would also include a non-exhaustive list of DTC services that are not deemed critical.

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. As discussed further below, 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

[10] 17 CFR 240.17Ad–22(e)(3)(ii).

[11] DTC has other links in addition to those mentioned above. The current list of linked CSDs is available on the DTCC website.

[12] *See* Rule 9(C) (Transactions in MMI Securities), *supra* note 4.

[13] *See* DTC Reorganizations Service Guide, *available at www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Reorganizations.pdf.*

[14] *See* DTC Distributions Service Guide, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Service%20Guide%20Distributions.pdf.*

[15] *See* DTC Settlement Service Guide, *available at www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf.*

substantial user demand from the continuing membership, would also be transferred.

The Plan would describe the governance structure of both DTCC and DTC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The 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 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 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, and, due to DTC's critical role in the markets in which it operates, oversight of DTC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[16] The 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 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 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 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 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 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. As described further below, 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 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.

DTC Recovery Plan

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. As each event that could lead to a financial loss could be unique in its circumstances, 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, as described in greater detail below. In all cases, DTC 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 in order to best protect DTC, its Participants and the markets in which it operates.

Managing Participant Default Losses and Liquidity Needs Through the Crisis Continuum. The 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 stressed market phase, (3) a phase commencing with DTC's decision to cease to act for a Participant or Affiliated Family of Participants,[18] and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to DTC's decision to cease to act for a Participant (referred to in the R&W Plan as a ''defaulting Participant,'' and the event as a ''Participant Default'') pursuant to the Rules.[19]

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. 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 manages these risk exposures collectively to limit their overall impact on DTC and its Participants. DTC has built-in mechanisms to limit exposures and

[16] The charter of the Board Risk Committee is *available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.*

[17] The 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; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

[18] The Plan an ''Affiliated Family'' of Participants as a number of affiliated entities that are all Participants of DTC.

[19] In the Plan, ''cease to act'' or ''default'' would be defined in accordance with the Rules, including 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 4.

replenish financial resources used in a stress event, in order to continue to operate in a safe and sound manner. DTC 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] 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 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. The Recovery Plan would 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, 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 ''stressed 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. For example, in connection with managing its market risk during this phase, DTC would, pursuant to its Rules and existing procedures, (1) monitor and assess the adequacy of its Participants Fund and Net Debit Caps; and (2) follow its operational procedures relating to the execution of a liquidation of the Participant's Collateral securities through close collaboration and coordination across multiple functions. 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, which would include, for example, the reduction of Net Debit Caps of some or all Participants, or seeking additional liquidity resources. 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, as proposed to be amended by the Loss Allocation Filing, would provide that losses be satisfied first by applying a ''Corporate Contribution,'' and then, if necessary, by allocating remaining losses to non-defaulting Participants.[26]

The ''recovery phase'' of the Crisis Continuum would describe actions that DTC may take to avoid entering into a wind-down of its business. In order to provide for an effective and timely recovery, the Recovery Plan would describe two stages of this phase: (1) A recovery corridor, 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; and (2) the recovery phase, 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]

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[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 Nos. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR–DTC–2017–004, SR–NSCC–2017–005, SR–FICC–2017–008); 81194 (July 24, 2017), 82 FR 35241 (July 28, 2017) (SR–DTC–2017–004, SR–NSCC–2017–005, SR–FICC–2017–008).

[21] *See* Rule 4 (Participants Fund and Participants Investment), *supra* note 4.

[22] *See* Rule 1, Section 1, *supra* note 4. For DTC, credit risk and market risk are closely related, as DTC monitors credit exposures from Participants through these risk management controls that are part of its 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 also* 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 Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 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 4.

[26] *See supra* note 8. The Loss Allocation Filing proposes to amend Rule 4 to define 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 would be 50 percent (50%) of the ''General Business Risk Capital Requirement,'' which is calculated pursuant to the Capital Policy and 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 compliance with Rule 17Ad–22(e)(15) under the Act. *See also supra* note 6; 17 CFR 240.17Ad–22(e)(15).

[27] The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an ''Event

DTC expects that significant deterioration of liquidity resources would cause it to enter the recovery corridor stage of this phase, and, as such, the actions it may take at this stage would be aimed at replenishing those resources. Circumstances that could cause it to enter the recovery corridor may include, for example, a rapid and material increase in market prices or sequential or simultaneous failures of multiple Participants or Affiliated Families of Participants over a compressed time period. 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 metrics referred to as ''Corridor Indicators.''

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. Corridor Indicators would include, for example, effectiveness and speed of DTC's efforts to liquidate Collateral securities, and an impediment to the availability of its resources to repay any borrowings due to any Participant Default. 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. Because DTC has never experienced the default of multiple Participants, it has not, historically, measured the deterioration or improvements metrics of the Corridor Indicators. As such, 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. 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. The actual length of a recovery corridor would vary based on actual market conditions observed on the date and time DTC enters the recovery corridor stage of the Crisis Continuum, 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, and would state that the available tools related to allocation of losses would only be used in this and subsequent phases of the Crisis Continuum.[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 throughout the Crisis Continuum to address liquidity shortfalls if they arise. 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. Liquidity tools include, for example, DTC's committed 364-day credit facility[30] and Net Credit Reductions.[31] 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.

As stated above, 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, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within 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 Corridor Indicators applicable to that phase of the Crisis Continuum, and, in most cases, by the measures and metrics that are assigned to those Corridor Indicators, as described above. Each of these indicators would have a defined review period and 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

Period'' as the ten (10) 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 of Directors that there is a non-default loss event, as described in greater detail in that filing. The proposed Rule 4 would define a ''round'' as a series of loss allocations relating to an Event Period, and would provide 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'' (as defined in the proposed Rule 4) of those Participants included in the round. *See supra* note 8.

[28] The Corridor Actions that would be identified in the Plan are 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 Plan for the Corridor Indicator to which the action relates.

[29] As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to Rule 4, described therein, reference is made to that filing and the details are not repeated here. *See supra* note 8.

[30] *See* Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR–DTC–2017–802; SR–NSCC–2017–802).

[31] DTC may borrow amounts needed to complete settlement from Participants by net credit reductions to their settlement accounts, secured by the Collateral of the defaulting Participant. *See* Securities Exchange Act Release Nos. 24689 (July 9, 1987), 52 FR 26613 (July 15, 1987) (SR–DTC–87–4); 41879 (September 15, 1999), 64 FR 51360 (September 22, 1999) (SR–DTC–99–15); 42281 (December 28, 1999), 65 FR 1420 (January 10, 2000) (SR–DTC–99–25).

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.

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 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 Plan would first identify some of the risks DTC faces that could lead to these losses, which include, for example, the business and profit/loss risks of unexpected declines in revenue or growth of expenses; 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 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.[32] The Recovery Plan would also describe DTC's approach to financial risk and capital management. The Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow DTC to effectively identify, monitor, and manage risks of non-default losses.

The 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,[33] (b) the Corporate Contribution,[34] 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.[35]

The Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.[36] Finally the 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 exceeds 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.[37]

The Plan would also describe proposed Rule 38 (Market Disruption and Force Majeure), which DTC is proposing to adopt in its Rules. This Proposed Rule would 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, as described in greater detail below.

The 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''), making 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 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 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. 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.

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 appropriate incentives to Participants and minimize negative impact on Participants and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad–22(e)(3)(ii) under the Act.[38] DTC's analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

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. While DTC believes that, given the comprehensive nature of the recovery tools, such event is extremely unlikely, as described in greater detail below, 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. Federal Bankruptcy Code,[39] and (3) after effectuating this transfer, DTC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. DTC believes 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,

[32] 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. *See* 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. *See* 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).

[33] *See supra* note 26.

[34] *See supra* note 26.

[35] *See supra* note 8.

[36] *See supra* note 6.

[37] *See supra* note 8.

[38] Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14).

[39] 11 U.S.C. 1101 *et seq.*

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 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. As such, a business reorganization or ''bail-in'' of debt approach would be unlikely to mitigate significant losses. Additionally, DTC's 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.'' 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.[40] The Plan would identify some of the indicators that DTC has entered this Runway Period, which would include, for example, simultaneous successive Participant Defaults, significant Participant retirements, and DTC's inability to replenish financial resources following the liquidation of Collateral securities.

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 Plan, DTC believes this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of DTC and Participants to avoid actions that might undermine DTC's recovery efforts. Additionally, 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[41] 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. Federal Bankruptcy Code.[42] As stated above, 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. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, DTC, except to the extent expressly provided in the court's order.[43]

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.[44]

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. As such, and as stated above, 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-

[40] 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 make clear that DTC cannot predict the willingness of Participants to do so.

[41] 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.

[42] 11 U.S.C. 1101 *et seq.*

[43] *See id.* at 363.

[44] 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, 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.

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 plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to achieve a recovery or orderly wind-down of DTC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by DTC's average monthly operating expenses, including adjustments to account for changes to DTC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of DTC's critical operations. The estimated wind-down costs would constitute the ''Recovery/Wind-down Capital Requirement'' under the Capital Policy.[45] 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.[46]

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) and proposed Rule 38 (Force Majeure and Market Disruption)), which would be adopted to facilitate the implementation of the Wind-down Plan, as discussed below.

Proposed Rules

In connection with the adoption of the R&W Plan, DTC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules would facilitate the execution of the R&W Plan and would provide Participants with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both DTC and its Participants. The Proposed Rules also provide a legal basis to these aspects of the Plan.

Rule 32(A) (Wind-Down of the Corporation)

The proposed Rule 32(A) (''Wind-down Rule'') would be adopted 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. The Wind-down Rule would 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. 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.

Wind-down Trigger. First, the Proposed Rule would 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 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.

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 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''). The Proposed Rule would 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.

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-

[45] *See supra* note 6.

[46] *See supra* note 6.

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.

Transfer of Membership. The proposed Wind-down Rule would address the expected transfer of DTC's membership to the Transferee, which DTC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Thus, under the proposal, in connection with the implementation of the Wind-down Plan and with no further action required by any party:

(1) Each Eligible Participant would become (i) a Participant of the Transferee and (ii) a party to a Participants agreement with the Transferee;

(2) each Participant that is delinquent in the performance of any obligation to DTC or that has provided notice of its election to withdraw as a Participant (a ''Non-Eligible Participant'') as of the Transfer Time would become (i) the holder of a transition period securities account maintained by the Transferee on its books (''Transition Period Securities Account'') and (ii) a party to a Transition Period Securities Account agreement of the Transferee;

(3) each Pledgee would become (i) a Pledgee of the Transferee and (ii) a party to a Pledgee agreement with the Transferee;

(4) each DRS Agent would become (i) a DRS Agent of the Transferee and (ii) a party to a DRS Agent agreement with the Transferee;

(5) each FAST Agent would become (i) a FAST Agent of the Transferee and (ii) a party to a FAST Agent agreement with the Transferee; and

(6) each Settling Bank for Participants and Pledgees would become (i) a Settling Bank for Participants and Pledgees of the Transferee and (ii) a party to a Settling Bank Agreement with the Transferee.

Further, the Proposed Rule would 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.

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.

Comparability Period. 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. Further to this goal, 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.

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.

Subordination of Claims Provisions and Miscellaneous Matters. The proposed Wind-down Rule would also 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.,* such firms are 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). This provision is designed to incentivize Participants to participate in DTC's recovery efforts.[47]

The proposed Wind-down Rule would address other ex-ante matters, including provisions providing that its Participants, Pledgees, DRS Agents, FAST Agents and Settling Banks (1) will assist and cooperate with DTC to effectuate the transfer of DTC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant DTC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by DTC pursuant to the Proposed Rule.

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. 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,'' including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which DTC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. 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. 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.

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.

2. Statutory Basis

DTC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, DTC believes that the R&W Plan and each of the Proposed Rules are consistent with Section 17A(b)(3)(F) of the Act,[48] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii) under the Act,[49] and the R&W Plan is consistent with Rule 17Ad–22(e)(15)(ii) under the Act,[50] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of DTC be 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 DTC or for which it is responsible.[51] The Recovery Plan and the proposed Force Majeure Rule would promote the prompt and accurate clearance and settlement of securities transactions by providing DTC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools DTC may use to address and minimize losses to both DTC and its Participants. The Recovery Plan and the proposed Force Majeure Rule would provide DTC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible by enabling actions that would address and minimize losses.

The Wind-down Plan and the proposed Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would also 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. The Wind-down Plan and the proposed Wind-down Rule would collectively establish a framework for the transfer and orderly wind-down of DTC's business. These proposals would establish clear mechanisms for the transfer of DTC's critical services and membership as well as clear provision for the transfer of the securities inventory it holds in fungible bulk for Participants. By doing so, the

[47] 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.

[48] 15 U.S.C. 78q–1(b)(3)(F).

[49] 17 CFR 240.17Ad–22(e)(3)(ii).

[50] *Id.* at 240.17Ad–22(e)(15)(ii).

[51] 15 U.S.C. 78q–1(b)(3)(F).

Wind-down Plan and these Proposed Rules are designed to facilitate the continuity of DTC's critical services and enable its Participants and Pledgees to maintain access to DTC's services through the transfer of its membership in the event DTC defaults or the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of DTC's critical clearance and settlement services, DTC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of DTC's business, DTC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible.

Therefore, DTC believes the R&W Plan and each of the Proposed Rules are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[52]

Rule 17Ad–22(e)(3)(ii) under the Act requires DTC 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.[53] The R&W Plan and each of the Proposed Rules are designed to meet the requirements of Rule 17Ad–22(e)(3)(ii).[54]

The R&W Plan would be maintained by DTC in compliance with Rule 17Ad–22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of DTC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.[55] Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that DTC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would address measures that DTC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Participant Default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan 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 would set forth clear mechanisms for the transfer of DTC's membership and business, and would be designed to facilitate continued access to DTC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of DTC in order to facilitate continuous access to DTC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of DTC. Therefore, DTC believes the R&W Plan would provide 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, and, as such, meets the requirements of Rule 17Ad–22(e)(3)(ii).[56]

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Participants with transparency regarding the material provisions of the Plan, and provide DTC with a legal basis for implementation of those provisions. As such, DTC also believes the Proposed Rules meet the requirements of Rule 17Ad–22(e)(3)(ii).[57]

DTC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to DTC's Participants to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide DTC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. DTC also believes the recovery tools are effective, as DTC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Participants are bound by the Rules through their Participants Agreements with DTC, and the Rules are adopted pursuant to a framework established by Rule 19b–4 under the Act,[58] providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which DTC is a party, as described above. Further, as many of the tools are embedded in DTC's ongoing risk management practices or are embedded into its predefined default-management procedures, DTC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are or are proposed to be included in the Rules, which are publicly available. DTC believes the recovery tools also provide appropriate incentives to its owners and Participants, as they are designed to control the amount of risk they present to DTC's clearance and settlement system. Finally, DTC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to DTC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, DTC believes that the recovery tools that would be identified and described in its Recovery Plan, including the authority provided to it in the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad–22(e)(3)(ii).[59]

Therefore, DTC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii).[60]

Rule 17Ad–22(e)(15)(ii) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential general business losses so that DTC can continue operations and services as a going concern if those losses materialize, including by holding LNA 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

[52] *Id.*

[53] 17 CFR 240.17Ad–22(e)(3)(ii).

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.* at 240.19b–4.

[59] *Supra* note 38.

[60] 17 CFR 240.17Ad–22(e)(3)(ii).

orderly wind-down of critical operations and services of the covered clearing agency.[61] While the Capital Policy addresses how DTC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs 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 would also 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 sufficient amount of LNA that DTC should 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, DTC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad–22(e)(15)(ii).[62]

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe the proposal would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act.[63] The proposal would apply uniformly to all Participants and Pledgees. DTC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Participant default scenario or non-default event. DTC is not proposing to alter the standards or requirements for becoming or remaining a Participant or Pledgee, or otherwise using its services. DTC also does not propose to change its methodology for calculation of Participants Fund contributions. The proposal is intended to (1) address the risk of loss events and identify the tools and resources available to it to withstand and recover from such events, so that it can restore normal operations, and (2) provide a framework for its orderly wind-down and the transfer of its business in the event those recovery tools do not restore DTC to financial viability, as described herein.

The R&W Plan and each of the Proposed Rules have been developed and documented in order to satisfy applicable regulatory requirements, as discussed above.

With respect to the Recovery Plan, the proposal generally reflects DTC's existing tools and existing internal procedures. Existing tools that would have a direct impact on the rights, responsibilities or obligations of Participants are reflected in the existing Rules or are proposed to be included in the Rules. Accordingly, the Recovery Plan and the proposed Force Majeure Rule are intended to provide a roadmap, define the strategy and identify the tools available to DTC in connection with its recovery efforts. By proposing to enhance DTC's existing internal management and its regulatory compliance related to its recovery efforts, DTC does not believe the Recovery Plan or the proposed Force Majeure Rule would have any impact, or impose any burden, on competition.

With respect to the Wind-down Plan and the proposed Wind-down Rule, which facilitate the execution of the Wind-down Plan, the proposal would operate to effect the transfer of all eligible Participants and Pledgees to the Transferee, and would not prohibit any market participant from either bidding to become the Transferee or from applying for membership with the Transferee. The proposal also would not prohibit any Participant or Pledgee from withdrawing from DTC prior to the Transfer Time, as is permitted under the Rules today, or from applying for membership with the Transferee. Therefore, as the proposal would treat each similarly situated Participant and Pledgee identically under the Wind-down Plan and under the Proposed Wind-down Rule, DTC does not believe the Wind-down Plan or the proposed Wind-down Rule would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

While DTC has not solicited or received any written comments relating to this proposal, DTC has conducted outreach to its Members in order to provide them with notice of the proposal. DTC will notify the Commission of any written comments received by DTC.

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 clearing agency 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–DTC–2017–021 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–DTC–2017–021. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-*

[61] *Id.* at 240.17Ad–22(e)(15)(ii).

[62] *Id.*

[63] 15 U.S.C. 78q–1(b)(3)(I).

filings.aspx). 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–DTC–2017–021 and should be submitted on or before January 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00080 Filed 1–5–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82428; File No. SR–NSCC–2017–018]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend the Loss Allocation Rules and Make Other Changes

January 2, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2017, National Securities Clearing Corporation (''NSCC'') 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 clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's Rules and Procedures (''Rules'') in order to amend provisions in the Rules regarding loss allocation as well as make other changes, as described in greater detail below.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The primary purpose of this proposed rule change is to amend NSCC's loss allocation rules in order to enhance the resiliency of NSCC's loss allocation process so that NSCC can take timely action to address multiple loss events that occur in succession during a short period of time (defined and explained in detail below). In connection therewith, the proposed rule change would (i) align the loss allocation rules of the three clearing agencies of The Depository Trust & Clearing Corporation (''DTCC''), namely 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''), so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies, (ii) increase transparency and accessibility of the loss allocation rules by enhancing their readability and clarity, (iii) reduce the time within which NSCC is required to return a former Member's Clearing Fund deposit, and (iv) make conforming and technical changes.

(i) Background

Central counterparties (''CCPs'') play a key role in financial markets by mitigating counterparty credit risk on transactions between market participants. CCPs achieve this by providing guaranties to participants and, as a consequence, are typically exposed to credit risks that could lead to default losses. In addition, in performing its critical functions, a CCP could be exposed to non-default losses that are otherwise incident to the CCP's clearance and settlement business.

A CCP's rulebook should provide a complete description of how losses would be allocated to participants if the size of the losses exceeded the CCP's pre-funded resources. Doing so provides for an orderly allocation of losses, and potentially allows the CCP to continue providing critical services to the market and thereby results in significant financial stability benefits. In addition, a clear description of the loss allocation process offers transparency and accessibility to the CCP's participants.

Current NSCC Loss Allocation Process

As a CCP, NSCC's loss allocation process is a key component of its risk management process. Risk management is the foundation of NSCC's ability to guarantee settlement, as well as the means by which NSCC protects itself and its Members from the risks inherent in the clearance and settlement process. NSCC's risk management process must account for the fact that, in certain extreme circumstances, the collateral and other financial resources that secure NSCC's risk exposures may not be sufficient to fully cover losses resulting from the liquidation of the portfolio of a Member for whom NSCC has ceased to act.[5]

The Rules currently provide for a loss allocation process through which both NSCC (by applying no less than 25% of its retained earnings in accordance with Addendum E) and its Members would share in the allocation of a loss resulting from the default of a Member for whom NSCC has ceased to act pursuant to the Rules. The Rules also recognize that NSCC may incur losses outside the context of a defaulting Member that are otherwise incident to NSCC's clearance and settlement business.

NSCC's loss allocation rules currently provide that in the event NSCC ceases to act for a Member, the amounts 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 (*e.g.,* payments from Clearing Agency Cross-Guaranty Agreements), 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

[64] 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 this proposed rule change as an 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, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] 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 the types of actions it may take. *Supra* note 4.

positions. If these amounts are not sufficient to cover all losses incurred, then NSCC will apply the following available resources, in the following loss allocation waterfall order:

First, as provided in Addendum E, 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

Second, if a loss still remains, as and in the manner provided in Rule 4, the required Clearing Fund deposits of Members who are 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.

Overview of the Proposed Rule Changes

A. Changes To Enhance Resiliency of NSCC's Loss Allocation Process

In order to enhance the resiliency of NSCC's loss allocation process, NSCC proposes to change the manner in which each of the aspects of the loss allocation waterfall described above would be employed. NSCC would retain the current core loss allocation process following the application of the defaulting Member's resources, *i.e.,* first, by applying NSCC's corporate contribution, and second, by pro rata allocations to Members. However, NSCC would clarify or adjust certain elements and introduce certain new loss allocation concepts, as further discussed below. In addition, the proposed rule change 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.

Accordingly, NSCC is proposing five (5) key changes to enhance NSCC's loss allocation process:

(1) Changing the Calculation and Application of NSCC's Corporate Contribution

As stated above, Addendum E currently provides that NSCC will contribute no less than 25% 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% of the NSCC General Business Risk Capital Requirement.[6] NSCC's General Business Risk Capital Requirement, as defined in NSCC's Clearing Agency Policy on Capital Requirements,[7] 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.[8] The proposed Corporate Contribution (as defined in the proposed rule change) would be held in addition to NSCC's General Business Risk Capital Requirement.

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 such terms are defined below and in the proposed rule change), and would be a mandatory contribution by NSCC prior to any allocation of the loss among NSCC's Members.[9] As proposed, if the Corporate Contribution is fully or partially used against a loss or liability relating to an Event Period (as defined below and in the proposed rule change), the Corporate Contribution would be reduced to the remaining unused amount, if any, during the following two hundred fifty (250) business days[10] in order to permit NSCC to replenish the Corporate Contribution.[11] To ensure transparency, Members would receive notice of any such reduction to the Corporate Contribution.

As compared to the current approach of applying ''no less than'' a percentage of retained earnings to defaulting Member losses, the proposed Corporate Contribution would be a fixed percentage of NSCC'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, which is consistent with the current industry guidance that ''a CCP should identify the amount of its own resources to be applied towards losses arising from custody and investment risk, to bolster confidence that participants' assets are prudently safeguarded.''[12]

Under the current Addendum E, 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 it would be clear 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.

The proposed rule changes relating to the calculation and application of the Corporate Contribution are set forth in proposed Sections 4 and 5 of Rule 4, as further described below.

[6] NSCC calculates its General Business Risk Capital Requirement as the amount equal to the greatest of (i) an amount determined based on its general business profile, (ii) an amount determined based on the time estimated to execute a recovery or orderly wind-down of NSCC's critical operations, and (iii) an amount determined based on an analysis of NSCC's estimated operating expenses for a six (6) month period.

[7] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–NSCC–2017–004).

[8] 17 CFR 240.17Ad–22(e)(15).

[9] The proposed rule change would not require a Corporate Contribution with respect to the use of the Clearing Fund 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.

[10] Rule 1 defines ''business day'' as ''any day on which the Corporation is open for business. However, on any business day that banks or transfer agencies in New York State are closed or a Qualified Securities Depository is closed, no deliveries of securities and no payments of money shall be made through the facilities of the Corporation.'' *Supra* note 4.

[11] NSCC believes that two hundred and fifty (250) business days would be a reasonable estimate of the time frame that NSCC would require 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.

[12] *See Resilience of central counterparties (CCPs): Further guidance on the PFMI,* issued by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, at 42 (July 2017), *available at www.bis.org/cpmi/publ/d163.pdf.*

(2) Introducing an Event Period

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 is proposing 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 in a period of ten (10) business days (''Event Period'') for purposes of allocating losses to Members in one or more rounds (as described below), subject to the limitations of loss allocation set forth in the proposed rule change and as explained below.[13] 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[14] for a Defaulting Member (as defined below and in the proposed rule change) (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 determination by the Board of Directors that the applicable loss or liability 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 will potentially generate losses to be mutualized among Members in order to ensure that NSCC may continue to offer clearance and settlement services in an orderly manner (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 ten (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 (as defined below and in the proposed rule change) would apply for any withdrawing Member, 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.

The proposed rule changes relating to the implementation of an Event Period are set forth in proposed Section 4 of Rule 4, as further described below.

(3) Introducing the Concept of ''Rounds'' and Loss Allocation Notice

Pursuant to the proposed rule change, 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 Loss Allocation Notice (as defined below and in the proposed rule change). 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 (5) 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.[15]

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.

For example, for illustrative purposes only, after the required Corporate Contribution, if NSCC has a $5 billion loss determined with respect to an Event Period and the sum of Loss Allocation Caps for all Members subject to the loss allocation is $4 billion, the first round would begin when NSCC issues the first Loss Allocation Notice for that Event Period. NSCC could issue one or more Loss Allocation Notices for the first round until the sum of losses allocated equals $4 billion. Once the $4 billion is allocated, the first round would end and NSCC would need a second round in order to allocate the remaining $1 billion of loss. NSCC would then issue a Loss Allocation Notice for the $1 billion and this notice would be the first Loss Allocation Notice for the second round. The issuance of the Loss Allocation Notice for the $1 billion would begin the second round.

The proposed rule 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. As proposed and as described further below, a Member could limit its loss allocation exposure to its Loss Allocation Cap by providing notice of its election to withdraw from membership within five (5) business days after the issuance of the first Loss Allocation Notice in any round.

The proposed rule changes relating to the implementation of ''rounds'' and Loss Allocation Notices are set forth in proposed Section 4 of Rule 4, as further described below.

[13] NSCC believes that having a ten (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.

[14] *Supra* note 5.

[15] Pursuant to the current Section 8 of Rule 4, the time period for a participant to give notice of its election to terminate its business with NSCC in respect of a pro rata charge is ten (10) business days after receiving notice of a pro rata charge. *Supra* note 4.

NSCC believes that it is appropriate to shorten such time period from ten (10) business days to five (5) 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 believes that five (5) business days would provide Members with sufficient time to decide whether to cap their loss allocation obligations by withdrawing from their membership in NSCC.

(4) Implementing a ''Look-Back'' Period To Calculate a Member's Loss Allocation Pro Rata Share and Its Loss Allocation Cap

Currently, the Rules calculate a Member's pro rata share for purposes of loss allocation based on the Member's ''allocation for a System,'' which in turn is based on settlement dollar amounts. Therefore, a Member's loss allocation obligations are currently based on the Member's activity in each of the various services or ''Systems'' offered by NSCC.[16] The Rules do not anticipate the possibility of more than one Defaulting Member Event or Declared Non-Default Loss Event in quick succession.

Given NSCC's risk-based margining methodology, NSCC believes 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 is proposing that ''Required Deposits'' be renamed ''Required Fund Deposits,'' as described below). Accordingly, NSCC is proposing to calculate each Member's pro rata share of losses and liabilities to be allocated in any round (as described below and in the proposed rule change) to be equal to (i) the average of a Member's Required Fund Deposit for the seventy (70) business days prior to the first day of the applicable Event Period (or such shorter period of time that the Member has been a Member) (''Average RFD'') divided by (ii) the sum of Average RFD amounts for all Members that are subject to loss allocation in such round.

Additionally, NSCC is proposing that each Member's maximum payment obligation with respect to any loss allocation round (the Member's Loss Allocation Cap) be equal to the greater of (i) its Required Fund Deposit on the first day of the applicable Event Period or (ii) its Average RFD.

NSCC believes 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, 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 believes 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.

NSCC believes that having a look-back period of seventy (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.

The proposed rule changes relating to the implementation of a look-back period are set forth in proposed Section 4 of Rule 4, as further described below.

(5) Capping Withdrawing Members' Loss Allocation Exposure and Related Changes

NSCC's current loss allocation rules allow a Member to withdraw if the Member notifies NSCC, within ten (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, which is its Required Deposit as fixed immediately prior to the time of the pro rata charge. As discussed above, the proposed rule change would continue providing Members the opportunity to limit their loss allocation exposure by offering withdrawal options; however, the cap on loss allocation would be calculated differently and the associated withdrawal process would also be modified as it relates to withdrawals associated with the loss allocation process. In particular, the proposed rule change would shorten the withdrawal notification period from ten (10) business days to five (5) 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, as further described below.

As proposed, if a Member provides notice of its withdrawal from membership, the maximum amount of losses it would be responsible for would be its Loss Allocation Cap,[17] provided that the Member complies with the requirements of the withdrawal process in proposed Section 6 of Rule 4.[18]

Currently, NSCC's loss allocation provisions provide that if a pro rata 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. To increase transparency of the timeframe under which NSCC would require funds from Members to satisfy their loss allocation obligations, NSCC is proposing that Members would receive two (2) business days' notice of a loss allocation, and Members would be required to pay the requisite amount no later than the second business day following issuance of such notice.[19] Members would have five (5) business days [20] from the issuance of the first Loss Allocation Notice in any round of an Event Period to decide whether to withdraw from membership.[21]

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.

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 Members included in the round. If a Member 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 NSCC's losses, a second round will be noticed to those Members that did not elect to

[16] NSCC's current loss allocation rules pre-date NSCC's move to a risk-based margining methodology.

[17] If a Member's Loss Allocation Cap exceeds the Member's then-current Required Fund Deposit, it must still cover the excess amount.

[18] 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 4.

[19] NSCC believes that allowing Members two (2) 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.

[20] *Supra* note 15.

[21] NSCC believes 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.

withdraw from membership in the previous round; however, as noted above, 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.

Pursuant to the proposed rule change, in order to avail itself of its Loss Allocation Cap, a Member would need to follow the requirements in proposed Section 6 of Rule 4, which would provide that the Member must: (i) Specify in its Loss Allocation Withdrawal Notice (as defined below and in the proposed rule change) an effective date of withdrawal, which date shall be no later than ten (10) business days following the last day of the applicable Loss Allocation Withdrawal Notification Period (as defined below and in the proposed rule change) (*i.e.,* no later than ten (10) business days after the 5th business day following the first Loss Allocation Notice in that round of loss allocation),[22] (ii) 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 (iii) 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.

The proposed rule changes are designed to enable NSCC to continue the loss allocation process in successive rounds until all of NSCC's losses are allocated. 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.

The proposed rule changes relating to capping withdrawing Members' loss allocation exposure and related changes to the withdrawal process are set forth in proposed Sections 4 and 6 of Rule 4, as further described below.

B. Changes To Align Loss Allocation Rules

The proposed rule 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, especially for firms that are participants of two or more DTCC Clearing Agencies. As proposed, the loss allocation waterfall and certain related provisions, *e.g.,* returning a former Member's Clearing Fund, would be consistent across the DTCC Clearing Agencies to the extent practicable and appropriate. The proposed rule changes of NSCC that would align loss allocation rules of the DTCC Clearing Agencies are set forth in proposed Sections 1, 2, 7, and 12 of Rule 4, as further described below.

C. Clarifying Changes Relating to Loss Allocation

The proposed rule changes are intended to make the provisions in the Rules governing loss allocation more transparent and accessible to Members. In particular, NSCC is proposing the following changes relating to loss allocation to clarify Members' obligations for Declared Non-Default Loss Events.

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.[23] The Rules currently permit NSCC to apply Clearing Fund to non-default losses. Specifically, pursuant to Section 2(b) of Rule 4,[24] 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 provides additional details regarding the application of the Clearing Fund to losses outside of a System.

If there is a failure of NSCC following a non-default loss, such occurrence would affect Members in much the same way as a failure of NSCC following a Defaulting Member Event. Accordingly, NSCC is proposing rule changes to enhance the provisions relating to non-default losses by clarifying Members' obligations for such losses.

Specifically, NSCC is proposing enhancement of 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 will 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 rule change would provide that NSCC would then be required to promptly notify Members of this determination, which is referred to in the proposed rule as a Declared Non-Default Loss Event. In addition, NSCC is proposing to better align the interests of NSCC with those of its Members by stipulating a mandatory Corporate Contribution apply to a Declared Non-Default Loss Event prior to any allocation of the loss among Members, as described above. Additionally, NSCC is proposing language to clarify Members' obligations for Declared Non-Default Loss Events.

The proposed rule changes relating to Declared Non-Default Loss Events and Members' obligations for such events are set forth in proposed Section 4 of Rule 4, as further described below.

D. Reduce the Time Within Which NSCC Is Required To Return a Former Member's Clearing Fund Deposit

The proposed rule change would reduce the time period 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 will return the Member's Actual Deposit in the form of (i) cash or securities within thirty (30) calendar days and (ii) Eligible Letters of Credit within ninety (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 NSCC may retain for up to two (2) years the Actual Deposits from Members who have Sponsored Accounts at DTC.

NSCC believes that shortening the time period for the return of a Member's Clearing Fund deposit would be helpful to firms who have exited NSCC so that they could have use of the deposits sooner than under the current Rules while at the same time protecting NSCC because such return would only occur if

[22] NSCC believes that having an effective date of withdrawal that is not later than ten (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.

[23] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[24] 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 4.

all obligations of the terminating Member to NSCC have been satisfied, which would include both matured as well as contingent obligations.

The proposed rule changes relating to the reduced time period in which NSCC is required to return the Clearing Fund deposit of a former Member are set forth in proposed Section 7 of Rule 4, as further described below.

The foregoing changes as well as other changes (including a number of conforming and technical changes) that NSCC is proposing in order to improve the transparency and accessibility of the Rules are described in detail below.

(ii) Detailed Description of the Proposed Rule Changes Related to Loss Allocation

A. Proposed Changes to Rule 4 (Clearing Fund)

Overview of Rule 4 (Clearing Fund)

Rule 4 currently addresses Clearing Fund requirements and loss allocation obligations. While Procedure XV addresses the various Clearing Fund calculations, Rule 4 sets forth rights, obligations and other aspects associated with the Clearing Fund, as well as the loss allocation process. Rule 4 is currently organized into 12 sections. NSCC is proposing changes to each section, and consolidating provisions in Rule 4 relating to Mutual Fund Services and Insurance and Retirement Processing Services into new sections, as described below.

Section 1

Section 1 of Rule 4 currently sets forth the requirement that each Member and Mutual Fund/Insurance Services Member shall, and each Fund Member and Insurance Carrier/Retirement Services Member may, be required to make a deposit to the Clearing Fund. Section 1 currently provides that each participant's Required Deposit is based on one or more formulas specified by NSCC's Board of Directors. The basis of each such formula is participants' usage of NSCC's facilities. Section 1 also currently sets forth the minimum amount of each participant category's Required Deposit.

Current Section 1 allows a portion of a participant's Clearing Fund deposit to be evidenced by an open account indebtedness secured by Eligible Clearing Fund Securities, subject to certain limitations set forth in Procedure XV, and sets forth the various requirements associated with the deposit of Eligible Clearing Fund Securities. Current Section 1 also permits NSCC to require participants to post a letter of credit where NSCC believes the participants present legal risk.

Current Section 1 also provides that NSCC allocate the Clearing Fund by types of service (*e.g.,* Mutual Fund Services) as well as by Systems (*e.g.,* CNS), and divide the Clearing Fund into separate ''Allocations'' for each such service and separate ''Funds'' for each such System.

Under the proposed rule change, NSCC is proposing to add a subheading of ''Required Fund Deposits'' to Section 1 and restructure Section 1 so that it applies to Members only and delete references to Mutual Fund/Insurance Services Members, Fund Members and Insurance Carrier/Retirement Services Members from Section 1.[25] Provisions of Rule 4 regarding Mutual Fund/Insurance Services Members and Fund Members would be covered in a new proposed Section 13 to Rule 4, discussed below. Provisions of Rule 4 regarding Insurance Carrier/Retirement Services Members would be covered in a new proposed Section 14 to Rule 4, discussed below.

Under the proposed rule change, Section 1 would continue to have the same provisions as they relate to Members except for the following: (i) The language throughout the section would be reorganized, streamlined and clarified, (ii) ''Required Deposits'' would be renamed ''Required Fund Deposits,'' [26] which is a more descriptive term to refer to Members' deposits required for the Clearing Fund, and would harmonize with the rules of FICC/GSD and FICC/MBSD [27] and the term used in such rules,[28] (iii) a sentence would be added regarding additional deposits maintained by the Members at NSCC, and (iv) the provision regarding the Clearing Fund being allocated by Systems and services would be deleted.[29]

The proposed sentence regarding additional deposits to the Clearing Fund would permit Members to post such additional deposits at their discretion and would make clear that such additional deposits would be deemed to be part of the Clearing Fund and the Member's Actual Deposit (as discussed below and as defined in the proposed rule change) but would not be deemed to be part of the Member's Required Fund Deposit.

NSCC proposes to add language in Section 1 to make it clear that each Member would grant NSCC a first priority perfected security interest in its right, title and interest in and to any Eligible Clearing Fund Securities, funds and assets pledged to NSCC to secure the Member's open account indebtedness or placed by the Member in NSCC's possession (or its agents acting on its behalf) to secure all such Member's obligations to NSCC, and that NSCC would be entitled to exercise the rights of a pledgee under common law and a secured party under Articles 8 and 9 of the New York Uniform Commercial Code with respect to such assets. The additional language would further harmonize the Rules with language used in the FICC/GSD Rules and FICC/MBSD Rules,[30] thus providing consistent treatment of pledged resources for firms that are members of both NSCC and FICC.

NSCC proposes to clarify the language in footnote 2 of Section 1. In addition, NSCC proposes to add ''Eligible Letter of Credit'' as a defined term to refer to letters of credit posted by participants if required by NSCC,[31] which would harmonize the term with the term used in the FICC/GSD Rules and FICC/MBSD Rules,[32] thus providing consistent terminology for firms that are members of both NSCC and FICC.

Similarly, NSCC proposes to add ''Actual Deposit'' as a defined term in Section 1 to refer to Eligible Clearing Fund Securities, funds and assets pledged to NSCC to secure a Member's open account indebtedness or placed by a Member in the possession of NSCC (or its agents acting on its behalf) and any Eligible Letters of Credit issued on behalf of a Member in favor of NSCC.

Instead of requiring participants to pledge Eligible Clearing Fund Securities to NSCC's account at a Qualified Securities Depository designated by the participants, NSCC proposes to clarify and streamline Section 1 of proposed Rule 4 to provide that Eligible Clearing

[25] In addition to Section 1 of Rule 4, NSCC is proposing to delete references to Mutual Fund/Insurance Services Members, Fund Members and Insurance Carrier/Retirement Services Members from Sections 2, 3, 4, 5, 6, 7, 8, 9, and 12 of Rule 4.

[26] In addition to Section 1 of Rule 4, NSCC is proposing to rename ''Required Deposits'' to ''Required Fund Deposits'' in Sections 2, 3, 4, 8, 9, and 11 of Rule 4.

[27] FICC/GSD Rulebook (''FICC/GSD Rules''), *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf* and FICC/MBSD Clearing Rules (''FICC/MBSD Rules''), *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf.*

[28] *See* FICC/GSD Rule 1 (Definitions) and FICC/MBSD Rule 1 (Definitions), *supra* note 27.

[29] In addition to Section 1 of Rule 4, NSCC is proposing to delete references to the Clearing Fund being allocated by Systems and services from Sections 2, 3, and 4 of Rule 4.

[30] *See* Section 4 of FICC/GSD Rule 4 and Section 4 of FICC/MBSD Rule 4, *supra* note 27.

[31] In addition to Section 1 of Rule 4, NSCC is also proposing to rename ''Letter of Credit'' to ''Eligible Letter of Credit'' in Sections 2 and 12 of Rule 4.

[32] *See* FICC/GSD Rule 1 (Definitions) and FICC/MBSD Rule 1 (Definitions), *supra* note 27.

Fund Securities pledged to secure a Member's open account indebtedness would be delivered to NSCC's account at DTC.

NSCC would delete the provision regarding allocation of the Clearing Fund by Systems and services, as this provision is no longer relevant under the proposed rule change. Provisions relating to Mutual Fund Services and Insurance and Retirement Processing Services in Section 1 (as well as other sections in Rule 4) would be consolidated in the proposed new Sections 13 and 14, entitled ''Mutual Fund Deposits'' and ''Insurance Deposits,'' respectively.

To consolidate provisions regarding the maintenance, investment and permitted use of Clearing Fund, NSCC would move the last paragraph of Section 1 about segregation and maintenance of Clearing Fund (again, in terms of ''Fund,'' ''System,'' and ''Allocation,'' as discussed above) to Section 2.

In addition, NSCC proposes to correct a typographical error in the reference to a footnote in Section 1 of Rule 4. Specifically, there is an incorrect reference to footnote 22 in the second paragraph of Section 1 in current Rule 4. NSCC is proposing to change this reference to reflect the correct footnote, which is footnote 2.

Section 2

Section 2 of Rule 4 currently covers the permitted uses of the Clearing Fund (again by ''Fund'' and ''Allocation,'' as set forth in current Section 1), including the investment of Clearing Fund Cash and Cash Receipts, as well as participants' rights to any interest earned or paid on pledged Eligible Clearing Fund Securities or cash deposits.

NSCC is proposing to add a subheading of ''Permitted Use, Investment, and Maintenance of Clearing Fund Assets'' to Section 2 and restructure Section 2 so that it applies to Members only. NSCC is also proposing to restructure Section 2 so that the permitted use of Clearing Fund appears first, then the investment of Clearing Fund, followed by maintenance of Clearing Fund.

Under the proposed rule change, the permitted use of Clearing Fund paragraph would continue to have the same provisions as they relate to how the Clearing Fund can be used by NSCC, except the provisions would be streamlined and clarified. Specifically, in order to be consistent with the proposed change in Section 4 (as described below) regarding NSCC requiring Members to pay their loss allocation amounts (leaving their Required Fund Deposits intact), NSCC is proposing to modify the permitted use of Clearing Fund to make it clear that the Clearing Fund can be used by NSCC to secure each Member's performance of obligations to NSCC, including each Member's obligations with respect to any loss allocations as set forth in Section 4 of Rule 4. NSCC is also proposing to delete the defined term of Cash Receipts and related provisions from Rule 4 because, unlike the Clearing Fund, Cash Receipts are money payments received from participants and payable to others; therefore, NSCC believes that continuing to include Cash Receipts in Rule 4 is no longer necessary and may cause confusion among Members.

NSCC is proposing to add a paragraph that provides that each time NSCC uses any part of the Clearing Fund to provide liquidity to NSCC to meet its settlement obligations, including, without limitation, through the direct use of cash in the Clearing Fund or through the pledge or rehypothecation of pledged Eligible Clearing Fund Securities in order to secure liquidity for more than thirty (30) calendar days, NSCC, at the close of business on the 30th calendar day (or on the first business day thereafter) from the day of such use, would consider the amount used but not yet repaid as a loss to the Clearing Fund incurred as a result of a Defaulting Member Event and immediately allocate such loss in accordance with proposed Section 4 of Rule 4. NSCC believes that this proposed change would increase transparency and accessibility of the Rules for Members by specifying a point in time by which NSCC would need to replenish the Clearing Fund through loss allocation if NSCC uses the Clearing Fund to provide or secure liquidity to NSCC to meet its settlement obligations. NSCC believes that a period of thirty (30) calendar days would be appropriate because it would provide sufficient time for NSCC to determine whether it would be able to obtain the necessary funds from liquidation of the portfolio of the Defaulting Member to repay the used Clearing Fund amount. In addition, this proposed change would also harmonize this section with the comparable section in the FICC/GSD Rules and FICC/MBSD Rules,[33] so as to provide consistent treatment for firms that are members of both NSCC and FICC.

Proposed Section 2 would continue to have the same provisions concerning the investment and maintenance of the Clearing Fund, except these provisions would also be streamlined and clarified. Specifically, NSCC is proposing language to make it clear that it may invest cash in the Clearing Fund in accordance with the Clearing Agency Investment Policy adopted by NSCC.[34] NSCC would revise the relocated sentence from Section 1 which provides that NSCC shall not be required to segregate any Clearing Fund (again, in terms of ''Fund,'' ''System,'' and ''Allocation,'' as discussed above) in order to (i) conform to the proposed deletions in Section 1 and use the newly defined term of ''Actual Deposit'' as set forth in Section 1 and (ii) make clear that NSCC would not be required to segregate a Member's Actual Deposit but that NSCC would maintain books and records concerning the assets that constitute each Member's Actual Deposit.

Under the proposed rule change, Members would continue to be entitled to any interest earned or paid on Clearing Fund cash deposits and pledged Eligible Clearing Fund Securities; however, NSCC is proposing additional language to make it clear that interest on pledged Eligible Clearing Fund Securities that is received by NSCC would be credited to a Member's cash deposits to the Clearing Fund, except in the event of a default by such Member on any obligations to NSCC, in which case NSCC may exercise its rights under proposed Section 3 of Rule 4.

Section 3

Section 3 of Rule 4 currently provides that NSCC may apply a participant's actual deposit to any obligation the participant has to NSCC that the participant has failed to satisfy and to any Cross-Guaranty Obligation. Participants are required to eliminate any resulting deficiencies in their Required Deposits within such time as NSCC requires. Section 3 also currently provides for the manner in which loss allocation would apply with respect to Off-the-Market Transactions.

Under the proposed rule change, NSCC is proposing to add a subheading of ''Application of Clearing Fund Deposits and Other Amounts to Members' Obligations'' and to delete provisions that do not apply to Members and/or that reference the Clearing Fund being allocated into Funds/Allocations by Systems and services. Under the proposed rule change, NSCC would retain the provisions in Section 3 regarding applying the Member's Actual Deposit to satisfy an obligation to NSCC

[33] *See* Section 5 of FICC/GSD Rule 4 and Section 5 of FICC/MBSD Rule 4, *supra* note 27.

[34] *See* Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR–NSCC–2016–003).

that a Member fails to satisfy and the requirement to replenish the Required Fund Deposit as necessary, but NSCC proposes to add clarifying language that, in addition to a Member's Actual Deposit, NSCC will also apply any amounts available under a Clearing Agency Cross-Guaranty Agreement and any proceeds therefrom to satisfy the obligation. NSCC also proposes to add language making it clear that NSCC may take any and all actions with respect to the assets and amounts referenced in the prior sentence, including assignment, transfer, and sale of any Eligible Clearing Fund Securities, that NSCC determines is appropriate.

Under the proposed rule change, NSCC would move the provision regarding allocation of losses from Off-the-Market Transactions to proposed Section 4 of Rule 4, which addresses allocation of losses to Members. NSCC would streamline and clarify the remaining provisions for transparency and accessibility.

Section 4 and Section 5

Current Section 4 of Rule 4 contains NSCC's current loss allocation waterfall, which would be initiated if NSCC incurs a loss or liability in a System that is not satisfied pursuant to current Section 3. Section 4 currently provides for the following loss allocation waterfall:

(i) Application of NSCC's existing retained earnings or such lesser part [35] of the existing retained earnings unless the Board of Directors elects to apply the Fund/Allocation for a particular System or service.

(ii) If a loss or liability remains after the application of the retained earnings, NSCC would apply the Clearing Fund (this application is subject to the current structure where the Rules provide that the Clearing Fund is allocated to different Systems/services).

a. NSCC is required to provide participants and the Commission with 5 business days' prior notice before applying the Clearing Fund.

b. Participants (other than those responsible for causing the loss or liability) would be charged pro rata based upon their allocation to the applicable Fund, less any amounts that participants were required to deposit pursuant to Rule 15.

Section 5 of Rule 4 currently states that if a pro rata charge is made pursuant to Rule 4 against a participant's actual Clearing Fund deposit, and as a consequence thereof the participant's remaining deposit is less than its Required Deposit, the participant would, upon demand by NSCC, be required to replenish its deposit to eliminate the deficiency within such time as NSCC shall require. Current Section 5 further provides that if the participant does not take this required action, NSCC may take disciplinary action against the participant, and any disciplinary action taken against the participant or the voluntary or involuntary termination of the participant's membership will not affect the obligations of the participant to NSCC or any remedy to which NSCC may be entitled under applicable law.

Under the proposed rule change, NSCC is proposing to add a subheading of ''Loss Allocation Waterfall, Off-the-Market Transactions'' to Section 4 and delete provisions that do not apply to Members and/or that reference the Clearing Fund being allocated into Funds/Allocations by System or service. In addition, NSCC is proposing to restructure its loss allocation waterfall as described below.

Under the proposal, Section 4 would make clear that the loss allocation waterfall applies to losses and liabilities (i) relating to or arising out of a default of a Member for whom NSCC has ceased to act pursuant to Rule 46 (such Member being referred to as a ''Defaulting Member'') that is not satisfied pursuant to proposed Sections 3, 13 or 14 of Rule 4 (a ''Defaulting Member Event'' or (ii) otherwise incident to the clearance and settlement business of NSCC, as determined below (a ''Declared Non-Default Loss Event'').

Proposed Section 4 would establish the concept of an ''Event Period'' to provide for a clear and transparent way of handling multiple loss events occurring in a period of ten (10) business days, which would be grouped into an Event Period.[36] As stated above, both Defaulting Member Events or Declared Non-Default Loss Events could occur within the same Event Period.

Under the proposal, an Event Period with respect to a Defaulting Member Event would begin on the day NSCC notifies participants that it has ceased to act for a Defaulting Member (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 NSCC notifies Members of the determination by the Board of Directors that the applicable loss or liability incident to the clearance and settlement business of NSCC 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 will potentially generate losses to be mutualized among Members in order to ensure that NSCC may continue to offer clearance and settlement services in an orderly manner (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.

Under proposed Section 4, the loss allocation waterfall would begin with a corporate contribution from NSCC (''Corporate Contribution''), as is the case under the current Rules, but in a different form than under the current Section 4 of Rule 4. Today, pursuant to Addendum E, in the event of a Member impairment, NSCC is required to apply at least 25% of its retained earnings existing at the time of a Member impairment; however, no corporate contribution from NSCC is currently required for losses resulting other than those from Member impairments. Under the proposal, NSCC would amend Section 5 to add a subheading of ''Corporate Contribution'' and define NSCC's Corporate Contribution with respect to any loss allocation pursuant to proposed Section 4 of Rule 4, whether arising out of or relating to a Defaulting Member Event or a Declared Non-Default Loss Event, as an amount that is equal to fifty (50) percent of the amount calculated by NSCC in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.[37] The proposed rule change would specify that NSCC's General Business Risk Capital Requirement, as defined in NSCC's Clearing Agency Policy on Capital Requirements,[38] 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.[39]

As proposed, if NSCC applies the Corporate Contribution to a loss or liability arising out of or relating to one or more Defaulting Member Events or Declared Non-Default Loss Events relating to an Event Period, then for any subsequent Event Periods that occur

[35] Addendum E provides that NSCC ''will apply no less than twenty-five percent (25%) of its retained earnings, existing at the time of a Member impairment which gives rise to a loss or liability not satisfied by the impaired Member's Clearing Fund deposit, to such loss or liability.'' *Supra* note 4.

[36] *Supra* note 13.

[37] *Supra* note 6.

[38] *Supra* note 7.

[39] *Supra* note 8.

during the two hundred fifty (250) business days thereafter,[40] the Corporate Contribution would be reduced to the remaining unused portion of the Corporate Contribution amount that was applied for the first Event Period. Proposed Section 5 would require NSCC to notify Members of any such reduction to the Corporate Contribution.

Currently, the Rules do not require NSCC to contribute its retained earnings to losses and liabilities other than from Member impairments. Under the proposal, NSCC would expand the application of its corporate contribution beyond losses and liabilities from Member impairments. The proposed Corporate Contribution would apply to losses or liabilities relating to or arising out of Defaulting Member Events and Declared Non-Default Loss Events, and would be a mandatory loss contribution by NSCC prior to any allocation of the loss among Members.

Addendum E currently provides NSCC the option 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 the result of a Member's impairment. This option would be retained and expanded under the proposal to also cover non-default losses. Proposed Section 5 would provide that nothing in the Rules would prevent NSCC from voluntarily applying amounts greater than the Corporate Contribution against any NSCC loss or liability, whether a Defaulting Member Event or a Declared Non-Default Loss Event, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

Proposed Section 4 of Rule 4 would provide that NSCC shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Defaulting Member Events and/or Declared Non-Default Loss Events that occur within an Event Period. The proposed rule change also provides that if losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, NSCC would allocate such losses and liabilities to Members, as described below.

The proposed rule change to Section 4 of Rule 4 would clarify that all Members would be subject to loss allocation for losses and liabilities relating to or arising out of a Declared Non-Default Loss Event; however, in the case of losses and liabilities relating to or arising out of a Defaulting Member Event, only non-defaulting Members would be subject to loss allocation. In addition, NSCC is proposing to clarify that 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 allocations with respect to that Event Period. NSCC is also proposing that NSCC would notify Members subject to loss allocation of the amounts being allocated to them (''Loss Allocation Notice'') in successive rounds of loss allocations.

Under the proposed rule change, 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 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.

As proposed, each loss allocation would be communicated to Members by the issuance of a Loss Allocation Notice. 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 (5) business days from the issuance of such first Loss Allocation Notice for the round (such period, a ''Loss Allocation Withdrawal Notification Period'') 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.[41]

Proposed Section 4 of Rule 4 would also retain the requirement of loss allocation among Members if a loss or liability remains after the application of the Corporate Contribution, as described above. In contrast to the current Section 4 where NSCC would apply Members' Required Deposits to the mutualized loss allocation amounts, under the proposal, NSCC would require Members to pay their loss allocation amounts (leaving their Required Fund Deposits intact).[42] Loss allocation obligations would continue to be calculated based upon a Member's pro rata share of losses and liabilities (although the pro rata share would be calculated differently than it is today), and Members would still retain the ability to voluntarily withdraw from membership and cap their loss allocation obligation (although the loss allocation obligation would also be calculated differently than it is today).

As proposed, each Member's pro rata share of losses and liabilities to be allocated in any round would be equal to (i) the Member's Average RFD, divided by (ii) the sum of the Average RFD amounts of all Members subject to loss allocation in such round. Each Member would have a maximum payment obligation with respect to any loss allocation round that would be equal to the greater of (x) its Required Fund Deposit on the first day of the applicable Event Period or (y) its Average RFD (such amount would be each Member's ''Loss Allocation Cap''). Therefore, the sum of the Loss Allocation Caps of the Members subject to loss allocation would constitute the maximum amount that NSCC would be permitted to allocate in each round.

As proposed, Members would have two (2) business days after NSCC issues a first round Loss Allocation Notice to pay the amount specified in any such notice.[43] On a subsequent round (*i.e.,* if the first round did not cover the entire loss of the Event Period because NSCC was only able to allocate up to the round cap), Members would also have two (2) business days after notice by NSCC to pay their loss allocation amounts (again subject to their Loss Allocation Caps), unless Members have notified (or will timely notify) NSCC of their election to withdraw from membership with respect to a prior loss allocation round pursuant to proposed Section 6 of Rule 4.

As proposed, Section 4 would also provide that, to the extent that a Member's Loss Allocation Cap exceeds

[40] *Supra* note 11.

[41] *Supra* note 15.

[42] NSCC believes that shifting from the two-step methodology of applying the Clearing Fund and then requiring Members to immediately replenish it to requiring direct payment would increase efficiency, while preserving the right to charge the Member's Clearing Fund deposits in the event the Member does not timely pay. Such a failure to pay would trigger recourse to the Clearing Fund deposits of the Member under proposed Section 3 of Rule 4. In addition, this change would provide greater stability for NSCC in times of stress by allowing NSCC to retain the Clearing Fund, its critical pre-funded resource, while charging loss allocations.

[43] *Supra* note 19.

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.

Under the proposal, if a Member fails to make its required payment in respect of a Loss Allocation Notice by the time such payment is due, NSCC would have the right to proceed against such Member as a Member that has failed to satisfy an obligation in accordance with proposed Section 3 of Rule 4 described above. Members who wish to withdraw would be required to comply with the requirements in proposed Section 6 of Rule 4, described further below. Specifically, proposed Section 4 of Rule 4 would provide that if, after notifying NSCC of its election to withdraw from membership pursuant to proposed Section 6 of Rule 4, the Member fails to comply with the provisions of proposed Section 6 of Rule 4, its notice of withdrawal would be deemed void and any further losses resulting from the applicable Event Period may be allocated against it as if it had not given such notice.

Under the proposal, NSCC would delete the provision in current Section 4 of Rule 4 that requires NSCC to provide Members and the Commission with 5 business days' prior notice before applying the Clearing Fund to a loss or liability because such requirement would no longer be relevant under the proposed rule change. Under the proposed rule change, NSCC would notify Members subject to loss allocation of the amounts being allocated to them in one or more Loss Allocation Notices. As proposed, instead of applying the Clearing Fund, NSCC would require Members to pay their loss allocation amounts (leaving their Clearing Fund deposits intact). In order to conform to these proposed rule changes, NSCC is proposing to eliminate the required notification to Members regarding the application of Clearing Fund in current Section 4 of Rule 4. NSCC is also proposing to delete the required notification to the Commission regarding the application of Clearing Fund in the same section. While as a practical matter, NSCC would notify the Commission of a decision to loss allocate, NSCC does not believe such notification needs to be specified in the Rules.

Under the proposed rule change, NSCC would move the provision related to Off-the-Market Transactions from current Section 3 of Rule 4 to proposed Section 4 of Rule 4 and clarify that (i) a loss or liability of NSCC in connection with the close-out or liquidation of an Off-the-Market Transaction would be allocated to the Member that was the counterparty to such transaction and (ii) no allocation would be made if the Defaulting Member satisfied all applicable intraday mark-to-market margin charges assessed by NSCC with respect to the Off-the-Market Transaction prior to its default.[44]

Section 6

Proposed Section 6 of Rule 4 would include the provisions regarding withdrawal from membership currently covered by Section 8 of Rule 4. NSCC believes that relocating the provisions on withdrawal from membership as it pertains to loss allocation, so that it comes right after the section on the loss allocation waterfall, would provide for the better organization of Rule 4. As proposed, the subheading for Section 6 would read ''Withdrawal Following Loss Allocation.''

Currently, Section 8 of Rule 4 provides that participants may notify NSCC within ten (10) business days after receipt of notice of a pro rata charge that they have elected to terminate their membership and thereby avail themselves of a cap on loss allocation, which is currently their Required Deposit as fixed immediately prior to the time of the pro rata charge.

As stated above, under the proposed rule change, a Member who wishes to withdraw from membership in respect of a loss allocation must provide notice of its election to withdraw (''Loss Allocation Withdrawal Notice'') within five (5) business days from the issuance of the first Loss Allocation Notice in any round.[45] In order to avail itself of its Loss Allocation Cap, the Member would need to follow the requirements in proposed Section 6 of Rule 4, which would provide that the Member must: (i) Specify in its Loss Allocation Withdrawal Notice an effective date for withdrawal from membership, which date shall not be later than ten (10) business days following the last day of the Loss Allocation Withdrawal Notification Period (*i.e.,* no later than ten (10) business days after the 5th business day following the first Loss Allocation Notice in that round of loss allocation),[46] (ii) 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 (iii) 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.

NSCC is proposing to include a sentence in proposed Section 6 of Rule 4 to make it clear that if the Member fails to comply with the requirements set forth in that section, its Loss Allocation Withdrawal Notice will be deemed void, and the Member will remain subject to further loss allocations pursuant to proposed Section 4 of Rule 4 as if it had not given such notice.

Currently, Section 8 also contains provisions regarding additional pro rata charges that may be made by NSCC for the same loss or liability under the existing loss allocation process and the applicable caps that participants wishing to voluntarily terminate their membership after such additional pro rata charges are noticed may avail themselves of. These provisions would be replaced by the loss allocation process contained in proposed Section 4 described above.

Section 7

As proposed, Section 7 would cover the provisions on the return of a Member's Clearing Fund deposit that are currently covered by Section 6 of Rule 4. Proposed Section 7's subheading would be ''Return of Members' Clearing Fund Deposits'' and would apply only to Members.

Currently, with respect to the return of Clearing Fund deposits, Section 6 of Rule 4 states that NSCC will return a participant's Clearing Fund deposit 90 days after 3 conditions are met: (i) The participant ceases to be a participant, (ii) all transactions open at the time the participant ceases to be a participant which could result in a charge to the Clearing Fund have been closed, and (iii) all obligations of the participant to NSCC have been satisfied or have been deducted from the participant's Clearing Fund deposit by NSCC, provided that the participant has provided NSCC with satisfactory indemnities or guarantees or another participant has been substituted on all transactions and obligations of the participant.

Current Section 6 provides further that in the absence of an acceptable guarantee, indemnity or substitution, NSCC will retain the entire Clearing Fund deposit of a participant if such deposit is less than $100,000 for two (2)

[44] *See* Securities Exchange Act Release No. 79598 (December 19, 2016), 81 FR 94462 (December 23, 2016) (SR–NSCC–2016–005), at 94465, and Securities Exchange Act Release No. 79592 (December 19, 2016), 81 FR 94448 (December 23, 2016) (SR–NSCC–2016–803), at 94452.

[45] *Supra* note 15.

[46] *Supra* note 22.

years (or four (4) years for Members who have Sponsored Accounts at a Qualified Securities Depository) after conditions described in (i), (ii) and (iii) of the paragraph above have occurred. If the participant's Clearing Fund deposit is equal to or greater than $100,000, NSCC will retain the greater of twenty-five (25) percent of a participant's average Clearing Fund requirement over the twelve (12) months immediately prior to the date the participant ceased to be a participant, or $100,000 for two (2) years (or four (4) years for Members who have Sponsored Accounts at a Qualified Securities Depository) after conditions described in (i), (ii) and (iii) of the paragraph above have occurred.

Current Section 6 states that if a participant made a deposit with respect to the Mutual Fund Services or Insurance and Retirement Processing Services, the participant will be entitled to the return of this deposit ninety (90) days after all associated transactions in these services have been satisfied.

Finally, Section 6 currently provides that any obligation of a participant to NSCC unsatisfied at the time the participant ceases to be a participant will not be affected by such cessation of membership.

Proposed Section 7 would reduce the period 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 will return the Member's Actual Deposit in the form of (i) cash or securities within thirty (30) calendar days and (ii) Eligible Letters of Credit within ninety (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 NSCC may retain for up to two (2) years the Actual Deposits from Members who have Sponsored Accounts at DTC. NSCC believes that shortening the time periods for the return of a Member's Clearing Fund deposit would be helpful to firms who have exited NSCC so that they could have use of the deposits sooner than under the current Rules, while at the same time protecting NSCC because such return would only occur if all obligations of the terminating Member to NSCC have been satisfied. Proposed Section 7 would also harmonize the retention period for a Member's deposits to the Clearing Fund with the FICC/GSD Rules,[47] thus providing consistent treatment for firms that are members of both NSCC and FICC. Similarly, the Clearing Fund deposit retention for Members who have Sponsored Accounts at DTC would be reduced in order to stay consistent with the proposed retention period in the rules of DTC.[48] In addition, NSCC proposes to make it clear that a Member's obligations to NSCC would include both matured as well as contingent obligations.

Section 8

Proposed Section 8 of Rule 4 would cover the subject matter currently covered in Section 7 of Rule 4. Proposed Section 8's subheading would be ''Changes in Members' Required Fund Deposits'' and would apply only to Members.

Currently, Section 7 of Rule 4 requires participants to satisfy any increase in their Required Deposit within such time as NSCC requires. At the time the increase becomes effective, the participant's obligations to NSCC will be determined in accordance with the increased Required Deposit whether or not the Member has so increased its deposit. NSCC is not proposing any substantive changes to this provision, which will be renumbered as Section 8 of Rule 4 under the proposed rule change, except for streamlining the provision and limiting its application to Members as stated above.

Section 9

Currently, Section 9 of Rule 4 addresses situations where a participant has excess deposits in the Clearing Fund (*i.e.,* amounts above its Required Deposit). The current provision provides that NSCC will, on any day that NSCC has determined and provided notification that an excess deposit exists with respect to a participant, return an excess amount requested by a participant that follows the formats and timeframe established by NSCC for such request. The current provision makes clear that NSCC will not return the requested excess amount (i) until any amount required to be charged against the participant's Required Deposit is paid by the participant to NSCC and/or (ii) if NSCC determines that the participant's current month's use of one or more services is materially different than the previous month's use upon which such excess is based. Section 9 currently makes clear that, notwithstanding any of the foregoing, NSCC may, in its discretion, withhold any or all of a participant's excess deposit if the participant has been placed on the Watch List.[49] Current Section 9 also makes clear that nothing in this section limits NSCC's rights under Rule 15.[50]

Proposed Section 9 would add a subheading ''Excess Clearing Fund Deposits'' and would apply only to Members. NSCC is not proposing any substantive changes to this provision, except for streamlining the provisions in this section and eliminating the condition described in clause (i) of the paragraph above that limits participants' ability to request the return of excess amounts on deposit in the Clearing Fund and replacing clause (ii) of the paragraph above with a clause that provides NSCC may, in its discretion, withhold any or all of a participant's excess deposit if NSCC determines that the Member's anticipated activities in NSCC in the near future may reasonably be expected to be materially different than its activities of the recent past. NSCC believes that the proposed additional clause would protect NSCC and its participants because the clause would allow NSCC to retain excess deposits to cover an expected near-term increase in a Member's Required Fund Deposit amount due to the anticipated change in the Member's activities. The proposed additional clause would also align NSCC's Rules with that of FICC/GSD and FICC/MBSD,[51] thus providing consistent treatment for firms that are members of both NSCC and FICC.

[47] Section 10 of FICC/GSD Rule 4, in relevant part, states that ''If a Netting Member gives notice to the Corporation pursuant to Rule 3 of its election to terminate its membership in the Netting System, the Member's deposits to the Clearing Fund in the form of cash or securities shall be returned to it within 30 calendar days thereafter . . . provided that all amounts owing to the Corporation by the Member have been paid to the Corporation prior to such return and the Member has no remaining open Net Settlement Position, Fail Net Settlement Position, or Forward Net Settlement Position.'' *Supra* note 27.

[48] On December 18, 2017, DTC submitted a proposed rule change and an advance notice to enhance its rules regarding allocation of losses. *See* SR–DTC–2017–022 and SR–DTC–2017–804, which were filed with the Commission and the Board of Governors of the Federal Reserve System, respectively, but have not yet been published in the **Federal Register**. Copies of the proposed rule change and the advance notice are *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[49] Pursuant to Section 4 of Rule 2B, a Member could be placed on the Watch List either based on its credit rating of 5, 6 or 7, which can either be generated by the Credit Risk Rating Matrix or from a manual downgrade, or when NSCC deems such placement as necessary to protect NSCC and its Members. *Supra* note 4.

[50] Rule 15 permits NSCC to require a Member, Limited Member or any applicant to become either to furnish NSCC adequate assurances of the entity's financial responsibility and operational capability as NSCC may deem necessary. *Supra* note 4.

[51] *See* Section 9 of FICC/GSD Rule 4 (Clearing Fund and Loss Allocation) and Section 9 of FICC/MBSD Rule 4 (Clearing Fund and Loss Allocation). *Supra* note 27.

Section 10

Current Section 10 of Rule 4 provides for crediting persons against whom losses are charged pursuant to Rule 4 if there is a subsequent recovery of such losses by NSCC. NSCC is not proposing any changes to this section other than adding a subheading ''Subsequent Recovery Against Loss Amounts'' and replacing ''persons'' with ''Persons,'' which is currently defined in Rule 1 (Definitions and Descriptions) to mean ''a partnership, corporation, limited liability corporation or other organization, entity or an individual.'' Given that NSCC is a corporation, NSCC believes that the term ''Person'' already includes NSCC; however, for increased clarity, NSCC is proposing to add ''including the Corporation'' to make it clear to Members that if there is a subsequent recovery of losses charged pursuant to Rule 4, the net amount of the recovery would be credited to Persons, including NSCC, against whom the loss was charged in proportion to the amounts charged against them.

Section 11

Current Section 11 of Rule 4 provides that a participant may withdraw Eligible Clearing Fund Securities from pledge, provided that the participant has deposited cash with, or pledged additional Eligible Clearing Fund Securities to, NSCC that, in the aggregate, secure the open account indebtedness of the participant and/or satisfy the participant's Required Deposit. Proposed Section 11 would add a subheading ''Substitution or Withdrawal of Pledged Securities'' and would apply only to Members. NSCC is not proposing any substantive changes to this provision, except for changes to improve the transparency and accessibility of this section.

Section 12

Current Section 12 of Rule 4 makes it clear that NSCC has certain rights with respect to the Clearing Fund. Proposed Section 12 would add a subheading ''Authority of Corporation'' and would apply only to Members. NSCC is not proposing any substantive changes to this provision, except to clarify that a reference to 30 days in current Section 12 would mean 30 calendar days.

Section 13

NSCC is proposing to add a new Section 13 to Rule 4 that would be entitled ''Mutual Fund Deposits.'' Under the proposal, NSCC would consolidate provisions from various sections in the current Rule 4 concerning Mutual Fund/Insurance Services Members and Fund Members and group them into proposed Section 13. Aside from the consolidation, NSCC is not proposing any substantive changes to these provisions, except for changes to (i) reduce NSCC's retention period of Mutual Fund Deposits when a Mutual Fund Participant (as defined below and in the proposed rule change) elects to withdraw from membership, in order to harmonize it with the proposed change in Section 7, as described above, and (ii) improve the transparency and accessibility of the provisions.

Proposed Section 13 would provide that each Member that uses the Mutual Fund Services to submit mutual fund purchases, redemptions, or exchanges to any Fund Member or another Member and each Mutual Fund/Insurance Services Member would, and each Fund Member (collectively with such Members and Mutual Fund/Insurance Services Members, ''Mutual Fund Participants'') may, be required to make a cash deposit to the Clearing Fund in the amounts determined in accordance with Procedure XV and other applicable Rules (its ''Mutual Fund Deposit'' and, unless specified otherwise, for the purposes of the Rules, Required Fund Deposits shall include Mutual Fund Deposits). In the case of a Member, its Mutual Fund Deposit would be a separate and additional component of such Member's deposit to the Clearing Fund but not part of the Member's Required Fund Deposit for purposes of calculating pro rata loss allocations pursuant to proposed Section 4 of Rule 4.

As in the current Rules, proposed Section 13 would also provide that if any Mutual Fund Participant fails to satisfy any obligation to NSCC relating to Mutual Fund Services, notwithstanding NSCC's right to reverse in whole or in part any credit previously given to the contra side to any outstanding Mutual Fund Services transaction of the Mutual Fund/Insurance Services Member, NSCC would first apply such Mutual Fund Participant's Mutual Fund Deposit. If after such application any loss or liability remains and if such Mutual Fund Participant is a Member that is not otherwise obligated to NSCC, NSCC would apply such Member's Actual Deposit in accordance with proposed Section 3 of Rule 4. NSCC would next allocate any further remaining loss or liability to the other Mutual Fund Participants in successive rounds of loss allocations in each case up to the aggregate of Mutual Fund Deposits from non-defaulting Mutual Fund Participants, and after the first such round, Mutual Fund Participants that have not submitted a Loss Allocation Withdrawal Notice in accordance with proposed Section 6 of Rule 4, following the procedures and timeframes set forth in proposed Sections 4 and 6 of Rule 4 as if such Mutual Fund Participants are Members. If any loss or liability remains thereafter and there are no continuing Mutual Fund Participants, NSCC would proceed with loss allocations to Members for a Defaulting Member Event in accordance with proposed Section 4 of Rule 4.

As proposed, Section 13 would reduce NSCC's retention period of Mutual Fund Deposits from ninety (90) days under the current Section 6 of Rule 4 to thirty (30) calendar days. Specifically, NSCC is proposing that a Mutual Fund Participant that elects to withdraw from membership would be entitled to the return of its Mutual Fund Deposit no later than thirty (30) calendar days after all of its transactions have settled and it has satisfied all of its matured and contingent obligations to NSCC for which such Mutual Fund Participant was responsible while a Mutual Fund Participant. NSCC is proposing this change in order to harmonize the retention period of Mutual Fund Deposit with the proposed Clearing Fund retention period in proposed Section 7 of Rule 4, as described above.

As proposed, Section 13 would make it clear that NSCC's rights, authority and obligations with respect to deposits to the Clearing Fund as set forth in Rule 4 would apply to Mutual Fund Deposits.

Section 14

NSCC is proposing to add a new Section 14 to Rule 4 that would be entitled ''Insurance Deposits.'' Under the proposal, NSCC would consolidate provisions from various sections in current Rule 4 concerning Insurance Carrier/Retirement Services Members and group them into proposed Section 14. Aside from the consolidation, NSCC is not proposing any substantive changes to these provisions, except for changes to (i) reduce NSCC's retention period of Insurance Deposits when an Insurance Participant (as defined below and in the proposed rule change) elects to withdraw from membership, in order to harmonize it with proposed Section 7, as described above, and (ii) improve the transparency and accessibility of the provisions.

As in the current Rules, proposed Section 14 would provide that each Mutual Fund/Insurance Services Member that uses the Insurance and Retirement Processing Services and each Insurance Carrier/Retirement Services Member (collectively, ''Insurance Participants'') may be required to make a cash deposit to the Clearing Fund in the amounts determined in accordance with Procedure XV and other applicable Rules (its ''Insurance Deposit'' and, unless specified otherwise, for the purposes of the Rules, Required Fund Deposits shall include Insurance Deposits). Proposed Section 14 would also provide that if any Insurance Participant fails to satisfy any obligation to NSCC relating to the Insurance and Retirement Processing Services, NSCC would first apply such Insurance Participant's Insurance Deposit. If after such application any loss or liability remains, NSCC would allocate the remaining loss or liability to the other Insurance Participants in successive rounds of loss allocations in each case up to the aggregate of Insurance Deposits from non-defaulting Insurance Participants, and after the first such round, Insurance Participants that have not submitted a Loss Allocation Withdrawal Notice in accordance with proposed Section 6 of Rule 4, following the procedures and timeframes set forth in proposed Sections 4 and 6 of Rule 4 as if such Insurance Participants are Members. If any loss or liability remains thereafter and there are no continuing Insurance Participants, NSCC would proceed with loss allocations to Members for a Defaulting Member Event in accordance with proposed Section 4 of Rule 4.

As proposed, Section 14 would reduce NSCC's retention period of Insurance Deposits from ninety (90) days under the current Section 6 of Rule 4 to thirty (30) calendar days. Specifically, NSCC is proposing that an Insurance Participant that elects to withdraw from membership would be entitled to the return of its Insurance Deposit no later than thirty (30) calendar days after all of its transactions have settled and it has satisfied all of its matured and contingent obligations to NSCC for which such Insurance Participant was responsible while an Insurance Participant. NSCC is proposing this change in order to harmonize the retention period of Insurance Deposit with the proposed Clearing Fund retention period in proposed Section 7 of Rule 4, as described above.

As proposed, Section 14 would make it clear that NSCC's rights, authority and obligations with respect to deposits to the Clearing Fund as set forth in Rule 4 would apply to Insurance Deposits.

B. Proposed Changes to Addendum E (Statement of Policy—Application of Retained Earnings—Member Impairments) and Addendum K (Interpretation of the Board of Directors—Application of Clearing Fund)

Addendum E is a statement of policy that currently provides that NSCC will apply no less than twenty-five (25) percent of its retained earnings to cover losses or liabilities from a Member's impairment that is not otherwise satisfied by the impaired Member's Clearing Fund deposit. NSCC is proposing to delete Addendum E in its entirety because it would no longer be relevant given the proposed rule change relating to the Corporate Contribution discussed above.

NSCC is proposing to modify Addendum K to delete all provisions associated with loss allocation and application of the Clearing Fund in connection with a loss or liability incurred by NSCC, including modifying the title of Addendum K. These provisions would no longer be necessary under the proposed rule change because the loss allocation process in its entirety would be governed by Rule 4. In addition, the current language in Addendum K regarding allocation by System would no longer be applicable under the proposed rule change as described above. NSCC would retain the provisions in Addendum K that pertain to NSCC's guaranty and rename Addendum K ''The Corporation's Guaranty.''

(iii) Other Proposed Rule Changes

NSCC is proposing changes to Rule 1 (Definitions and Descriptions), Rule 2B (Ongoing Membership Requirements and Monitoring), Rule 4(A) (Supplemental Liquidity Deposits), Rule 13 (Exception Processing), Rule 15 (Assurances of Financial Responsibility and Operational Capability), Rule 42 (Wind-Down of a Member, Fund Member or Insurance Carrier/Retirement Services Member), Procedure III (Trade Recording Service (Interface with Qualified Clearing Agencies)), Procedure XV (Clearing Fund Formula and Other Matters), and Addendum O (Admission of Non-US Entities as Direct NSCC Members). NSCC is proposing changes to these Rules in order to conform them with the proposed changes to Rule 4 as well as to make certain technical changes to these Rules.

Specifically, NSCC is proposing to add the following defined terms to Rule 1, in alphabetical order: Actual Deposit, Average RFD, Clearing Fund Cash, Corporate Contribution, Declared Non-Default Loss Event, Defaulting Member, Defaulting Member Event, Eligible Letter of Credit, Event Period, Insurance Deposit, Insurance Participant, Issuer, Lender, Loss Allocation Cap, Loss Allocation Notice, Loss Allocation Withdrawal Notice, Loss Allocation Withdrawal Notification Period, Mutual Fund Deposit, Mutual Fund Participant, Required Fund Deposit, Termination Date, and Voluntary Termination Notice.

NSCC is proposing to delete the defined term ''The Corporation'' in Rule 1 and replace it with ''Corporation'' in Rule 1. NSCC is proposing to replace ''Required Deposits'' with ''Required Fund Deposits'' in Rule 2B, Rule 4(A), Rule 15, Rule 42, Procedure III, and Procedure XV. NSCC is also proposing to replace ''Letter of Credit'' with ''Eligible Letter of Credit'' in Rule 42 and Addendum O.

In addition, in Section 5 of Rule 2B, NSCC proposes to change the reference to Section 8 of Rule 4 to reflect the updated section number, which would be to Section 4 of Rule 4. NSCC is also proposing conforming changes to this section to ensure that termination provisions in the Rules, whether voluntary or in response to a loss allocation, are consistent with one another to the extent appropriate.

Currently, Section 5 of Rule 2B provides that participants may elect to voluntarily retire their membership by providing NSCC with written notice of such termination. Such termination will not be effective until accepted by NSCC, which shall be evidenced by a notice to NSCC's participants announcing the participant's retirement and the effective date of the retirement. This section also provides that a participant's voluntary termination of membership shall not affect its obligations to NSCC.

Where appropriate, NSCC is proposing changes to align Section 5 of Rule 2B with the proposed new Section 6 of Rule 4, both of which address termination of membership. Specifically, NSCC is proposing to rename the subheading of Section 5 of Rule 2B to ''Voluntary Termination'' and to provide that when a participant elects to voluntarily terminate its membership by providing NSCC a written notice of such termination (''Voluntary Termination Notice''), the participant must specify in its Voluntary Termination Notice an effective date for its withdrawal (''Termination Date''), provided such Termination Date shall not be prior to the scheduled final settlement date of any remaining obligation owed by the participant to NSCC as of the time such Voluntary

Termination Notice is submitted to NSCC, unless otherwise approved by NSCC. In addition, NSCC would make it clear that the acceptance by NSCC of a participant's Voluntary Termination Notice shall be no later than ten (10) business days after the receipt of such notice from the participant. NSCC is also proposing to clarify that as of the Termination Date, a participant that terminates its membership shall no longer be eligible or required to submit transactions to NSCC for clearance and settlement, unless the Board of Directors determines otherwise in order to ensure an orderly liquidation of the participant's open obligations. If any transaction is submitted to NSCC by such participant that is scheduled to settle on or after the Termination Date, the participant's Voluntary Termination Notice would be deemed void and the participant would remain subject to the Rules as if it had not given such notice. Furthermore, NSCC is proposing to add a sentence to Section 5 of Rule 2B to refer participants to Sections 7, 13 and 14 of Rule 4, as applicable, regarding provisions on the return of a participant's Clearing Fund deposit and to specify that if an Event Period were to occur after a participant has submitted its Voluntary Termination Notice but prior to the Termination Date, in order for such participant to benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4, the participant would need to comply with the provisions of Section 6 of Rule 4 and submit a Loss Allocation Withdrawal Notice, which notice, upon submission, would supersede and void any pending Voluntary Termination Notice previously submitted by the participant.

In Rule 4(A), NSCC proposes to amend Section 11 to update a cross-reference to the time period for the refund of deposits to the Clearing Fund when a Member ceases to be a participant in order to align it with proposed Section 7 of Rule 4, which would reduce the time period from 90 days to 30 calendar days. NSCC is also proposing to add a reference to Section 13 of Rule 4 in clause (c) of Section 13 of Rule 4(A) in order to specify that a Special Activity Supplemental Deposit of a Member may be used to satisfy a loss or liability as provided in such new proposed Section 13. NSCC is also proposing technical changes in Sections 2 and 13 of Rule 4(A) to reflect new proposed defined terms in the Rules.

In Rule 13, NSCC would replace ''System'' with ''system'' to reflect the proposed deletion of ''System'' as a defined term from Rule 4 and Addendum K. In Procedure XV, NSCC would replace ''Qualified Securities Depository'' with ''DTC'' to be consistent with the proposed change in Section 1 of Rule 4.

Member Outreach

Beginning in August 2017, NSCC conducted outreach to Members in order to provide them with advance notice of the proposed changes. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

Implementation Timeframe

Pending Commission approval, NSCC expects to implement this proposal promptly. Members would be advised of the implementation date of this proposal through issuance of an NSCC Important Notice.

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [52] and Rules 17Ad–22(e)(13) and 17Ad–22(e)(23)(i),[53] each as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the Rules be 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 NSCC or for which it is responsible.[54] The proposed rule changes to (1) modify the calculation and application of NSCC's corporate contribution, (2) introduce an Event Period, (3) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Member withdrawal process in connection with the loss allocation process, and (4) implement a ''look-back'' period to calculate a Member's loss allocation obligation (which would replace the current calculation of a Member's loss allocation obligation based on the Member's activity in each of the various services or ''Systems'' offered by NSCC) and its Loss Allocation Cap, taken together, are intended to enhance the overall resiliency of NSCC's loss allocation process.

By modifying the calculation of NSCC's corporate contribution, NSCC would apply a mandatory fixed percentage of its General Business Risk Capital Requirement (as compared to the current Rules which provide for ''no less than'' a percentage of retained earnings), which would provide greater transparency and accessibility to Members as to how much NSCC would contribute in the event of a loss or liability. By modifying the application of NSCC's corporate contribution to apply to Declared Non-Default Loss Events, in addition to Defaulting Member Events, on a mandatory basis, NSCC would expand the application of its corporate contribution beyond losses and liabilities from Member impairments, which would better align the interests of NSCC with those of its Members by stipulating a mandatory application of the Corporate Contribution to a Declared Non-Default Loss Event prior to any allocation of the loss among Members. Taken together, these proposed rule changes would enhance the overall resiliency of NSCC's loss allocation process by enhancing the calculation and application of NSCC's Corporate Contribution, which is one of the key elements of NSCC's loss allocation process. Moreover, by providing greater transparency and accessibility to Members, as stated above, the proposed rule changes regarding the Corporate Contribution, including the proposed replenishment period, would allow Members to better assess the adequacy of NSCC's loss allocation process.

By introducing the concept of an Event Period, NSCC would be able to group Defaulting Member Events and Declared Non-Default Loss Events occurring in a period of ten (10) business days for purposes of allocating losses to Members. NSCC believes that the Event Period would provide a defined structure for the loss allocation process 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 market dislocation episode. Having this structure would enhance the overall resiliency of NSCC's loss allocation process because NSCC would be better equipped to address losses that may arise from multiple Defaulting Member Events and/or Declared Non-Default Loss Events that arise in quick succession. Moreover, the proposed Event Period structure would provide certainty for Members concerning their maximum exposure to

[52] 15 U.S.C. 78q–1(b)(3)(F).

[53] 17 CFR 240.17Ad–22(e)(13) and (e)(23)(i).

[54] 15 U.S.C. 78q–1(b)(3)(F).

mutualized losses with respect to such events.

By introducing the concept of ''rounds'' (and accompanying Loss Allocation Notices) and applying this concept to the timing of loss allocation payments and the Member withdrawal process in connection with the loss allocation process, NSCC would (i) set forth a defined amount that it would allocate to Members during each round (*i.e.,* the round cap), (ii) advise Members of loss allocation obligation information as well as round information through the issuance of Loss Allocation Notices, and (iii) provide Members with the option to limit their loss allocation exposure after the issuance of the first Loss Allocation Notice in each round. These proposed rule changes would enhance the overall resiliency of NSCC's loss allocation process because they would enable NSCC to continue the loss allocation process in successive rounds until all of NSCC's losses are allocated and enable NSCC to identify continuing Members for purposes of calculating subsequent loss allocation obligations in successive rounds. Moreover, the proposed rule changes would define for Members a clear manner and process in which they could cap their loss allocation exposure to NSCC.

By implementing a ''look-back'' period to calculate a Member's loss allocation obligations and its Loss Allocation Cap, NSCC would discourage Members from reducing their settlement activity during a time of stress primarily to limit their loss allocation obligations. By determining a Member's loss allocation obligations and its Loss Allocation Cap based on the greater of its Required Fund Deposit or the average thereof over a look-back period, NSCC would be able to calculate a Member's pro rata share of losses and liabilities based on the amount of risk that the Member brings to NSCC. These proposed rule changes would enhance the overall resiliency of NSCC's loss allocation process because they would deter Members from reducing their settlement activity during a time of stress primarily to limit their Loss Allocation Caps.

Taken together, the foregoing proposed rule changes would establish a stronger (for all the reasons discussed above) and clearer loss allocation process for NSCC, which NSCC believes would allow it to take timely action to address losses. The ability to timely address losses would allow NSCC to continue to meet its clearance and settlement obligations, especially in circumstances that may involve a series of substantially contemporaneous loss events. Therefore, NSCC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

By reducing the time within which NSCC is required to return a former Member's Clearing Fund deposit, NSCC would enable firms that have exited NSCC to have access to their funds sooner than under the current Rules while at the same time protecting NSCC and its provision of clearance and settlement services because such return would only occur if all obligations of the terminating Member to NSCC have been satisfied. As such, NSCC would maintain the requisite level of Clearing Fund deposit to ensure that it can continue to meet its clearance and settlement obligations. Therefore, NSCC believes that this proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(13) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure NSCC has the authority and operational capacity to take timely action to contain losses and continue to meet its obligations.[55] As described above, the proposed rule changes to (1) modify the calculation and application of NSCC's corporate contribution, (2) introduce an Event Period, (3) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Member withdrawal process in connection with the loss allocation process, and (4) implement a ''look-back'' period to calculate a Member's loss allocation obligation (which would replace the current calculation of a Member's loss allocation obligation based on the Member's activity in each of the various services or ''Systems'' offered by NSCC) and its Loss Allocation Cap, taken together, are designed to enhance the resiliency of NSCC's loss allocation process. Having a resilient loss allocation process would help ensure that NSCC can effectively and timely address losses relating to or arising out of either the default of one or more Members or one or more non-default loss events, which in turn would help NSCC contain losses and continue to meet its clearance and settlement obligations. Therefore, NSCC believes that the proposed rule changes to enhance the resiliency of NSCC's loss allocation process are consistent with Rule 17Ad–22(e)(13) under the Act.

Rule 17Ad–22(e)(23)(i) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of NSCC's default rules and procedures.[56] The proposed rule changes to (i) align the loss allocation rules of the DTCC Clearing Agencies, (ii) improve the overall transparency and accessibility of the provisions in the Rules governing loss allocation, and (iii) make conforming and technical changes, would not only ensure that NSCC's loss allocation rules are, to the extent practicable and appropriate, consistent with the loss allocation rules of other DTCC Clearing Agencies, but also would help to ensure that NSCC's loss allocation rules are transparent and clear to Members. Aligning the loss allocation rules of the DTCC Clearing Agencies would provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and clear loss allocation rules would enable Members to better understand the key aspects of NSCC's default rules and procedures and provide Members with increased predictability and certainty regarding their exposures and obligations. As such, NSCC believes that the proposed rule changes to align the loss allocation rules of the DTCC Clearing Agencies as well as to improve the overall transparency and accessibility of NSCC's loss allocation rules are consistent with Rule 17Ad–22(e)(23)(i) under the Act.

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule changes to enhance the resiliency of NSCC's loss allocation process would impact competition.[57] As described above, the proposed rule changes to (1) modify the calculation and application of NSCC's corporate contribution, (2) introduce an Event Period, (3) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Member withdrawal process in connection with the loss allocation process, and (4) implement a ''look-back'' period to calculate a Member's loss allocation obligation (which would replace the current calculation of a Member's loss

[55] 17 CFR 240.17Ad–22(e)(13).

[56] 17 CFR 240.17Ad–22(e)(23)(i).

[57] 15 U.S.C. 78q–1(b)(3)(I).

allocation obligation based on the Member's activity in each of the various services or ''Systems'' offered by NSCC) and its Loss Allocation Cap, taken together, are intended to enhance the overall resiliency of NSCC's loss allocation process, and would apply equally to all Members. While the proposed rule changes would amend the manner in which NSCC's corporate contribution and loss allocation are calculated and applied, such proposed rule changes would maintain NSCC's current core loss allocation waterfall in the case of a loss relating to or arising out of the default of a Member for whom NSCC has ceased to act following application of the defaulting Member's resources, *i.e.,* NSCC's corporate contribution and loss allocation among Members. With respect to a loss or liability arising from a non-default loss event, the proposed rule changes clarify NSCC's contribution to such loss and liability, but, as with losses and liabilities arising from a Member default event, the proposed rule changes would maintain the loss mutualization requirement under the current Rule 4. While the calculation of the loss obligations associated with non-default losses would change under the proposal, NSCC would maintain this aspect of the loss allocation waterfall (*i.e.,* loss mutualization among Members for non-default losses). Based on the foregoing, NSCC believes that these proposed rule changes to enhance the resiliency of NSCC's loss allocation process would not have any impact on competition.

NSCC does not believe the proposed rule change to reduce the time within which NSCC is required to return a former Member's Clearing Fund deposit would impact competition.[58] This proposed rule change is intended to enable firms who have exited NSCC to have use of their Clearing Fund deposit sooner, while at the same time protecting NSCC because such return would only occur if all obligations of the terminated Member to NSCC have been satisfied. While the proposed rule change would reduce the applicable timeframe, it does not change the requirement that the return occur after all obligations to NSCC have been satisfied and the proposed rule change would apply equally to all Members. Based on the foregoing, NSCC believes that the proposed rule change to reduce the time within which NSCC is required to return a former Member's Clearing Fund deposit would not have any impact on competition.

NSCC also does not believe that the proposed rule changes to (i) align the loss allocation rules of the DTCC Clearing Agencies, (ii) increase the transparency and accessibility of provisions in the Rules governing loss allocation, and (iii) make conforming and technical changes, would impact competition.[59] These changes would apply equally to all Members. Alignment of the loss allocation rules of the DTCC Clearing Agencies are intended to increase the consistency of the Rules with the rules of other DTCC Clearing Agencies in order to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and accessible provisions in the Rules governing loss allocation are intended to improve the readability and clarity of the Rules regarding the loss allocation process. Making conforming and technical changes to ensure the Rules remain clear and accurate would facilitate Members' understanding of the Rules and their obligations thereunder. As such, NSCC believes that these proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–NSCC–2017–018 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–NSCC–2017–018. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2017–018 and should be submitted on or before January 29, 2018.

[58] *Id.*

[59] *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00076 Filed 1–5–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82426; File No. SR–DTC–2017–022]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Amend the Loss Allocation Rules and Make Other Changes

January 2, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2017, The Depository Trust Company (''DTC'') 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 clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise Rule 4 (Participants Fund and Participants Investment) to (i) provide separate sections for (x) the use of the Participants Fund as a liquidity resource for settlement and (y) loss allocation among Participants of losses and liabilities arising out of Participant defaults or due to non-default events; and (ii) enhance the resiliency of DTC's loss allocation process so that DTC can take timely action to contain multiple loss events that occur in succession during a short period of time.[4] In connection therewith, the proposed rule change would (i) align the loss allocation rules of the three clearing agencies of The Depository Trust & Clearing Corporation (''DTCC''), namely DTC, National Securities Clearing Corporation (''NSCC''), and Fixed Income Clearing Corporation (''FICC'') (collectively, the ''DTCC Clearing Agencies''),[5] so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies, (ii) increase transparency and accessibility of the provisions relating to the use of the Participants Fund as a liquidity resource for settlement and the loss allocation provisions, by enhancing their readability and clarity, (iii) require a defined corporate contribution to losses and liabilities that are incurred by DTC prior to any allocation among Participants, whether such losses and liabilities arise out of Participant defaults or due to non-default events, (iv) reduce the time within which DTC is required to return a former Participant's Actual Participants Fund Deposit, and (v) make conforming and technical changes. The proposed rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, as discussed below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would revise Rule 4 (Participants Fund and Participants Investment) to (i) provide separate sections for (x) the use of the Participants Fund as a liquidity resource for settlement and (y) loss allocation among Participants of losses and liabilities arising out of Participant defaults or due to non-default events; and (ii) enhance the resiliency of DTC's loss allocation process so that DTC can take timely action to contain multiple loss events that occur in succession during a short period of time. In connection therewith, the proposed rule change would (i) align the loss allocation rules of the DTCC Clearing Agencies, so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies, (ii) increase transparency and accessibility of the provisions relating to the use of the Participants Fund as a liquidity resource for settlement and the loss allocation provisions, by enhancing their readability and clarity, (iii) require a defined corporate contribution to losses and liabilities that are incurred by DTC prior to any allocation among Participants, whether such losses and liabilities arise out of Participant defaults or due to non-default events, (iv) reduce the time within which DTC is required to return a former Participant's Actual Participants Fund Deposit, and (v) make conforming and technical changes. The proposed rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, as discussed below.

(i) Background

Current Rule 4 provides a single set of tools and a common process for the use of the Participants Fund for both liquidity purposes to complete settlement among non-defaulting Participants, if one or more Participants fails to settle,[6] and for the satisfaction of losses and liabilities due to Participant

[60] 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, DTC filed this proposed rule change as an 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, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[5] On December 18, 2017, NSCC and FICC submitted proposed rule changes and advance notices to enhance their rules regarding allocation of losses. *See* SR–NSCC–2017–018, SR–FICC–2017–022 and SR–NSCC–2017–806, SR–FICC–2017–806, which were filed with the Commission and the Board of Governors of the Federal Reserve System, respectively, *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[6] DTC's primary objective is to complete settlement on each Business Day in reliance on liquidity resources comprised of, primarily, the Participants Fund and a committed secured line of credit from a syndicate of lenders. Settlement obligations of each Participant are limited by the amount of these liquidity resources through its Net Debit Cap and fully secured by Collateral of the Participant measured by its Collateral Monitor. These risk management controls are designed so that DTC may complete settlement notwithstanding the failure to settle of a Participant or Affiliated Family of Participants with the largest settlement obligation on any Business Day. The proposed rule change clarifies the use of the Participants Fund in this respect. The Actual Participants Fund Deposits of defaulting Participants would be applied to satisfy their settlement obligations and, should those be insufficient, the balance of the Participants Fund is also available as a liquidity resource. Collateral of defaulting Participants may be pledged to secure a borrowing under the committed line of credit.

defaults or certain other losses or liabilities incident to the business of DTC.[7] The proposed rule change would 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.

The proposed rule change would retain the core principles of current Rule 4 for both application of the Participants Fund as a liquidity resource to complete settlement and for loss allocation, while clarifying or refining certain provisions and introducing certain new concepts relating to loss allocation. 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,'' for the use of the Participants Fund to complete settlement as apportioned among non-defaulting Participants. The existing term generically applied to such a use or to a loss allocation is simply a ''pro rata charge.''[8]

For loss allocation, the proposed rule change, like current Rule 4, would continue to apply to both default and non-default losses and liabilities, and, to the extent allocated among Participants, would be charged ratably in accordance with their Required Participants Fund Deposits.[9] A new provision would require DTC to contribute to a loss or liability, either arising from a Participant default or non-default event, prior to any allocation among Participants. The proposed rule change would also introduce the new concepts of an ''Event Period'' and a ''round'' to address the allocation of losses arising from multiple events that occur in succession during a short period of time. These proposed rule changes would be substantially similar in these respects to analogous proposed rule changes for NSCC and FICC.

Current Rule 4 Provides for Application of the Participants Fund Through Pro Rata Charges

Current Rule 4 addresses the Participants Fund and Participants Investment requirements and, among other things, the permitted uses of the Participants Fund and Participants Investment.[10] Pursuant to current Rule 4, DTC maintains a cash Participants Fund. The Required Participants Fund Deposit for any Participant is based on the liquidity risk it poses to DTC relative to other Participants.[11]

Default of a Participant. Under Section 3 of current 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: (a) Apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation; (b) 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 (c) 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.

Application of the Participants Fund. Section 4 of current Rule 4 addresses the application of the Participants Fund if DTC incurs a loss or liability, which would include application of the Participants Fund to complete settlement or the allocation of losses once determined, including non-default losses. For both liquidity and loss scenarios, Section 4 of current 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).[13] It also provides for the optional use of an amount of DTC's retained earnings and undivided profits.

After the Participants Fund is applied pursuant to current 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 ten (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 (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% 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 terminate.

Overview of the Proposed Rule Changes

A. Application of Participants Fund To Participant Default and for Settlement

Proposed Section 3 of Rule 4 would retain the concept that when a Participant is obligated to DTC and fails to satisfy such obligation, which would be defined as a ''Participant Default,'' DTC may apply the Actual Participants Fund Deposit of the Participant to such obligation to satisfy the Participant Default. The proposed definition of ''Participant Default'' is for drafting clarity and use in related provisions.

[7] It may be noted that absent extreme circumstances, DTC believes that it is unlikely that DTC would need to act under proposed Sections 4 or 5 of Rule 4.

[8] *See* Rule 4, Section 5, *supra* note 4.

[9] It may be noted that for NSCC and FICC, the proposed rule changes for loss allocation include a ''look-back'' period to calculate a member's pro rata share and cap. The concept of a look-back or average is already built into DTC's calculation of Participants Fund requirements, which are based on a rolling sixty (60) day average of a Participant's six highest intraday net debit peaks.

[10] Each Participant is required to invest in DTC Series A Preferred Stock, ratably on a basis calculated in substantially the same manner as the Required Participants Fund Deposit. The Preferred Stock constitutes capital of DTC and is also available for use as provided in current and proposed Section 3 of Rule 4. This proposed rule change does not alter the Required Preferred Stock Investment.

[11] *Supra* note 6.

[12] As part of its liquidity risk management regime, DTC maintains a 364-day committed revolving line of credit with a syndicate of commercial lenders, renewed every year. 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] Section 2 of Rule 9(A) provides, in part, ''At 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 . . .'' Pursuant to the proposed rule 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.'' This is not a new concept, only the addition of a defined term for greater clarity. In the proposed rule change, this amount continues to be included or excluded as provided in current Rule 4, as noted below.

Proposed Section 4 would address the situation of a Participant failure to settle (which is one type of Participant Default) if the application of the Actual Participants Fund Deposit of that Participant, pursuant to proposed Section 3, is not sufficient to complete settlement among non-defaulting Participants.

Proposed Section 4 would expressly state that the Participants Fund 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 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. The pro rata charge per 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 proposed rule change would identify this as a ''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 calculation of each non-defaulting Participant's pro rata settlement charge would be similar to the current Section 4 calculation of a pro rata charge except that, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[14] For enhanced clarity as to the date of determination of the ratio, 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.''[15]

The proposed rule change would retain the concept that requires 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 rule change also would retain the concept of providing 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. The proposed rule change would shorten the notification period for the election to terminate from ten (10) Business Days to five (5) Business Days,[16] and would also 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.[17] A Participant that elects to terminate its business with DTC would, subject to its cap, remain responsible for (i) its pro rata settlement charge that was the subject of the Settlement Charge Notice and (ii) all other pro rata settlement charges until the Participant Termination Date (as defined below and in the proposed rule change). 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% of the amount thereof. The proposed cap would be no greater than the current cap.[18]

The pro rata application of the Actual Participants Fund Deposits of non-defaulting Participants to complete settlement when there is a Participant Default is not the allocation of a loss. A pro rata settlement charge would relate solely to the completion of settlement. New proposed loss allocation concepts described below, including, but not limited to, a ''round,'' ''Event Period,'' and ''Corporate Contribution,'' would not apply to pro rata settlement charges.[19]

B. Changes To Enhance Resiliency of DTC's Loss Allocation Process

In order to enhance the resiliency of DTC's loss allocation process and to align, to the extent practicable and appropriate, its loss allocation approach to that of the other DTCC Clearing Agencies, DTC proposes to introduce certain new concepts and to modify other aspects of its loss allocation waterfall. The proposed rule change would adopt an enhanced allocation approach for losses, whether arising from Default Loss Events or Declared Non-Default Loss Events (as defined below). In addition, the proposed rule change would clarify 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.

Accordingly, DTC is proposing four (4) key changes to enhance DTC's loss allocation process:

(1) Mandatory Corporate Contribution

Section 4 of current Rule 4 provides that if there is an unsatisfied loss or

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[14] Rule 4, Section 4(a)(1), *supra* note 4. DTC 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.

[15] DTC believes 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.

[16] DTC believes this shorter 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 (5) Business Day pro rata settlement charge notification period would conform to the proposed loss allocation notification period in this proposed rule change and in the proposed rule changes for NSCC and FICC. *See infra* note 31. *See also supra* note 5.

[17] DTC believes 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.

[18] Section 8 of current 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% 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 4. The alternative limit in clause (b) would be eliminated in proposed Section 8(a) in favor of a single defined standard.

[19] 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 the basic provision of remedies if a Participant fails to satisfy an obligation to DTC. Proposed Section 4 is a specific remedy for a failure to settle, *i.e.,* a specific type of Participant Default. Proposed Section 5 is also a remedial provision for a Participant Default when, additionally, DTC ceases to act for the Participant and there are remaining losses or liabilities. If a Participant Default occurs, the application of proposed Section 3 would be required, the application of proposed Section 4 would be at the discretion of DTC and the application of proposed Section 5 would only be triggered by the determination of DTC to cease to act for the defaulting Participant coupled with losses or liabilities incurred by 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 defaulting Participant, proposed Section 5 would apply.

A principal type of Participant Default is a failure to settle. A Participant's obligation to pay any amount due in settlement is secured by Collateral of the Participant. When the Participant fails to pay its settlement obligation, under Rule 9(B), Section 2, DTC has the right to Pledge or sell such Collateral to satisfy the obligation. *Supra* note 4. (It is more likely that DTC would borrow against the Collateral to complete settlement on the Business Day, because it is unlikely to be able to liquidate Collateral for same day funds in time to settle on that Business Day.) If DTC Pledges the Collateral to secure a loan to fund settlement (*e.g.,* under the End-of-Day Credit Facility), the Collateral would have to be sold to obtain funds to repay the loan. In any such sale of the Collateral, there is a risk, heightened in times of market stress, that the proceeds of the sale would be insufficient to repay the loan. That deficiency would be a liability or loss to which proposed Section 5 of Rule 4 would apply, *i.e.,* a Default Loss Event.

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 rule change, DTC would replace the discretionary application of an unspecified amount of retained earnings and undivided profits with a mandatory, defined Corporate Contribution (as defined below and in the proposed rule change). The Corporate Contribution would be used for losses and liabilities that are incurred by DTC with respect to an Event Period (as defined below and in the proposed rule change), whether arising from a Default Loss Event or Declared Non-Default Loss Event, before the allocation of losses to Participants.

The proposed ''Corporate Contribution'' would be defined to be an amount equal to fifty percent (50%) of DTC's General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.[20] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[21] 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.[22] The Corporate Contribution would be held in addition to DTC's General Business Risk Capital Requirement.

The proposed Corporate Contribution would apply to losses arising from Default Loss Events and Declared Non-Default Loss Events, and would be a mandatory contribution of DTC prior to any allocation among Participants.[23] As proposed, if the proposed 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 two hundred fifty (250) Business Days in order to permit DTC to replenish the Corporate Contribution.[24] To ensure transparency, Participants would receive notice of any such reduction to the Corporate Contribution.

By requiring a defined contribution of DTC corporate funds towards losses and liabilities arising from Default Loss Events and Declared Non-Default Loss Events, the proposed rule change would limit Participant obligations to the extent of such Corporate Contribution and thereby provide greater clarity and transparency to Participants as to the calculation of their exposure to losses and liabilities.

Proposed Rule 4 would also 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.

The proposed rule changes relating to the calculation and mandatory application of the Corporate Contribution are set forth in proposed Section 5 of Rule 4.

(2) Introducing an Event Period

The proposed rule change would clearly define the obligations of DTC and its Participants regarding the allocation of losses or liabilities (i) relating to or arising out of a Participant Default which is not satisfied pursuant to proposed Section 3 of Rule 4 and DTC has ceased to act for such Participant (a ''Default Loss Event'') and/or (ii) otherwise incident to the business of DTC,[25] as determined in proposed Rule 4 (a ''Declared Non-Default Loss Event''). In order to balance the need to manage the risk of sequential loss events against Participants' need for certainty concerning maximum loss allocation exposures, DTC is proposing to introduce the concept of an ''Event Period'' 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 in a period of ten (10) Business Days (''Event Period'') for purposes of allocating losses to Participants in one or more rounds, subject to the limits of loss allocation set forth in the proposed rule change and as explained below.[26] 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, the Event Period would begin on the day that DTC notifies Participants of the determination by the Board of Directors that the applicable loss or liability incident to the 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 clearance and settlement services in an orderly manner. If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs within the 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 within overlapping ten (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 (as defined below and in the proposed rule change) would apply for any terminating Participant, 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

[20] DTC calculates its General Business Risk Capital Requirement as the amount equal to the greatest of (i) an amount determined based on its general business profile, (ii) an amount determined based on the time estimated to execute a recovery or orderly wind-down of DTC's critical operations, and (iii) an amount determined based on an analysis of DTC's estimated operating expenses for a six (6) month period.

[21] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003).

[22] 17 CFR 240.17Ad–22(e)(15).

[23] The proposed rule change would not require a Corporate Contribution with respect to a pro rata settlement charge. However, as discussed above, if, after a Participant Default, the proceeds of the sale of the Collateral of the Participant are insufficient to replenish the Participants Fund and/or 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, subject to the Corporate Contribution.

[24] DTC believes that two hundred fifty (250) Business Days would be a reasonable estimate of the time frame that DTC would require 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.

[25] 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 4.

[26] DTC believes that having a ten (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.

Event Period, required for such losses to be crystallized and allocated.

The proposed rule changes relating to the implementation of an Event Period are set forth in proposed Section 5 of Rule 4.

(3) Introducing the Concept of ''Rounds'' and Loss Allocation Notice

Pursuant to the proposed rule change, 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 would 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 (as defined below and in the proposed rule change) in accordance with proposed Section 6(b) of Rule 4.

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, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[27] In addition, for enhanced clarity as to the date of determination of the ratio, 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.''[28]

DTC would notify Participants subject to loss allocation of the amounts being allocated to them (''Loss Allocation Notice'') in successive rounds of loss allocations. Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. Participants would receive two (2) Business Days' notice of a loss allocation,[29] and Participants would be required to pay the requisite amount no later than the second Business Day following the issuance of such notice.[30] 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 (5) Business Days[31] from the issuance[32] 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 pursuant to proposed Section 8(b) of Rule 4, and thereby benefit from its Loss Allocation Cap.

The round cap of any second or subsequent round 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.

For example, for illustrative purposes only, after the required Corporate Contribution, if DTC has a $4 billion loss determined with respect to an Event Period and the sum of Loss Allocation Caps for all Participants subject to the loss allocation is $3 billion, the first round would begin when DTC issues the first Loss Allocation Notice for that Event Period. DTC could issue one or more Loss Allocation Notices for the first round until the sum of losses allocated equals $3 billion. Once the $3 billion is allocated, the first round would end and DTC would need a second round in order to allocate the remaining $1 billion of loss. DTC would then issue a Loss Allocation Notice for the $1 billion and this notice would be the first Loss Allocation Notice for the second round. The issuance of the Loss Allocation Notice for the $1 billion would begin the second round.

The proposed rule 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. As proposed, a Participant could limit its loss allocation exposure to its Loss Allocation Cap by providing notice of its election to terminate its business with DTC within five (5) Business Days after the issuance of the first Loss Allocation Notice in any round.

The proposed rule changes relating to the implementation of ''rounds'' and Loss Allocation Notices are set forth in proposed Section 5 of Rule 4.

(4) Capping Terminating Participants' Loss Allocation Exposure and Related Changes

As discussed above, the proposed rule change would continue to provide Participants the opportunity to limit their loss allocation exposure by offering a termination option; however, the associated withdrawal process would be modified.

As proposed, if a Participant 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% of the amount thereof (''Loss Allocation Cap''),[33] provided that the Participant complies with the requirements of the termination process in proposed Section 6 of Rule 4. 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

[27] *See supra* note 14.

[28] DTC believes 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.

[29] DTC believes allowing Participants two (2) 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.

[30] Section 4 of current Rule 4 provides that if the Participants Fund is applied to a loss or liability, DTC must notify each Participant of the charge and the reasons therefor. Proposed Section 5 would modify this process to (i) require DTC to give *prior* notice; and (ii) require Participants to pay loss allocation charges, rather than directly charging their Required Participants Fund Deposits. DTC believes that shifting from the two-step methodology of applying the Participants Fund and then requiring Participants to immediately replenish it to requiring direct payment would increase efficiency, while preserving the right to charge the Settlement Account of the Participant in the event the Participant doesn't timely pay. Such a failure to pay would be, self-evidently, a Participant Default, triggering recourse to the Actual Participants Fund Deposit of the Participant under proposed Section 3 of Rule 4. In addition, this change would provide greater stability for DTC in times of stress by allowing DTC to retain the Participants Fund, its critical pre-funded resource, while charging loss allocations.

[31] Section 8 of current 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 ten (10) Business Days after receiving notice of a pro rata charge. DTC believes that it is appropriate to shorten such time period from ten (10) Business Days to five (5) 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 believes that five (5) Business Days would provide Participants with sufficient time to decide whether to cap their loss allocation obligations by terminating their business with DTC.

[32] *See supra* note 17.

[33] *See supra* note 18. The alternative limit in clause (b) would be eliminated in proposed Section 8(b) in favor of a single defined standard.

Participants Fund Deposit, it must still pay the excess amount.

As proposed, Participants would have five (5) 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 [34] 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.

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. As noted above, 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.

Pursuant to the proposed rule change, in order to avail itself of its Loss Allocation Cap, the Participant would need to follow the requirements in proposed Section 6 of Rule 4. In addition to retaining the substance of the existing requirements for any termination that are set forth in Section 6 of current Rule 4, proposed Section 6 also would provide that a Participant that provides a termination notice in connection with a loss allocation must: (1) Specify in the termination notice an effective date of termination (''Participant Termination Date''), which date shall be no later than ten (10) Business Days following the last day of the applicable Loss Allocation Termination Notification Period; (2) cease all activity that would result in transactions being submitted to DTC for clearance and settlement after the Participant Termination Date; and (3) ensure that all activities and use of DTC services for which such Participant may have any obligation to DTC cease prior to the Participant Termination Date.

The proposed rule changes are designed to enable DTC to continue the loss allocation process in successive rounds until all of DTC's losses are allocated. Until all losses related to an Event Period are allocated and paid, DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap.

The proposed rule changes relating to capping terminating Participants' loss allocation exposure and related changes to the termination process are set forth in proposed Sections 5, 6, and 8 of Rule 4.

C. Clarifying Changes Relating to Loss Allocation for Non-Default Events

The proposed rule changes are intended to make the provisions in the Rules governing loss allocation more transparent and accessible to Participants. In particular, DTC is proposing the following change relating to loss allocation to provide clarity around the governance for the allocation of losses arising from a non-default event.[35]

Currently, DTC can use the Participants Fund to satisfy losses and liabilities arising from a Participant Default or arising from an event that is not due to a Participant Default (*i.e.,* a non-default loss), provided that such loss or liability is incident to the business of DTC.[36]

DTC is proposing to clarify 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 will 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 rule change would provide that DTC would then be required to promptly notify Participants of this determination, which is referred to in the proposed rule as a Declared Non-Default Loss Event, as discussed above.

Finally, as previously discussed, pursuant to the proposed rule change, proposed Rule 4 would include language to clarify that (i) the Corporate Contribution would apply to losses or liabilities arising from a Default Loss Event or a Declared Non-Default Loss Event, and (ii) the loss allocation waterfall 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.

The proposed rule changes relating to Declared Non-Default Loss Events and Participants' obligations for such events are set forth in proposed Section 5 of Rule 4.

D. Changes to the Retention Time for the Actual Participants Fund Deposit of a Former Participant

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 is proposing 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 rule change, the time period would be reduced from four (4) years to two (2) years. All other requirements relating to the return of the Actual Participants Fund Deposit would remain the same.

The four (4) 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

[34] *I.e.,* a Participant will 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.

[35] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[36] *See supra* note 25.

after an alleged event. DTC believes that the change to two (2) years is appropriate because, currently, as DTC and the industry continue to move toward automation and dematerialization, claims typically surface more quickly. Therefore, DTC believes that a shorter retention period of two (2) 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.

(ii) Proposed Rule Changes

The foregoing changes as well as other changes (including a number of technical and conforming changes) that DTC is proposing in order to improve the transparency and accessibility of Rule 4 are described in detail below.

A. Changes Relating to the Retention of the Actual Participants Fund Deposit of a Former Participant

Section 1(h) (Proposed Section 1(g))

As discussed above, DTC is proposing to replace ''four'' years with ''two'' years, in order to reduce the time within which DTC would be required to return the Actual Participants Fund Deposit of a former Participant. In addition, DTC is proposing to (i) add the heading ''Return of Participants Fund Deposits to Participants'' to proposed Section 1(g), (ii) update a cross reference, and (iii) correct two typographical errors.

B. Changes Relating to Participant Default, Pro Rata Settlement Charges and Loss Allocation

Section 3

As discussed above, Section 3 of current Rule 4 provides that, if a Participant fails to satisfy an obligation to DTC, DTC may, in such order and in such amounts as DTC determines, apply the Actual Participants Fund Deposit of the defaulting Participant, Pledge the shares of Preferred Stock of the defaulting Participant to its lenders as collateral security for a loan, and/or sell the shares of Preferred Stock of the defaulting Participant to other Participants. Pursuant to the proposed rule change, Section 3 would retain most of these provisions, with the following modifications:

DTC proposes to add the term ''Participant Default'' in proposed Section 3 as a defined term for the failure of a Participant to satisfy an obligation to DTC, for drafting clarity and use in related provisions. In addition, the proposed rule change clarifies that, in the case of a Participant Default, DTC would first apply the Actual Participants Fund Deposit of the Participant to any unsatisfied obligations, before taking any other actions. This proposed clarification would reflect the current practice of DTC, and would provide Participants with enhanced transparency into the actions DTC would take with respect to the Participants Fund deposits and Participants Investment of a Participant that has failed to satisfy its obligations to DTC.

DTC proposes to correct the term ''End-of-Day Facility,'' to the existing defined term ''End-of-Day Credit Facility.'' DTC further proposes to clarify that, if DTC Pledges some or all of the shares of Preferred Stock of a Participant to its lenders as collateral security for a loan under the End-of-Day Credit Facility, DTC would apply the proceeds of such loan to the obligation the Participant had failed to satisfy, which is not expressly stated in Section 3 of current Rule 4.

In addition, DTC is proposing to make three ministerial changes to enhance readability by: (i) Removing the duplicative ''in,'' in the phrase ''in such order and in such amounts,'' (ii) replacing the word ''eliminate'' with ''satisfy,'' and (iii) to conform to proposed changes, renumbering the list of actions that DTC may take when there is a Participant Default.

DTC is also proposing to add the heading ''Application of Participants Fund Deposits and Preferred Stock Investments to Participant Default'' to Section 3.

Section 4 and Section 5

As noted above, Section 4 of current Rule 4 provides that if DTC incurs a loss or liability which is not satisfied by charging the Participant responsible for the loss pursuant to Section 3 of Rule 4, then DTC may, in any order and in any amount as DTC may determine, in its sole discretion, to the extent necessary to satisfy such loss or liability, ratably apply some or all of the Actual Participants Fund Deposits of all other Participants to such loss or liability and/or charge the existing retained earnings and undivided profits of DTC. This provision relates to losses and liabilities that may be due to the failure of a Participant to satisfy obligations to DTC, if the Actual Participants Fund Deposit of that Participant does not fully satisfy the obligation, or to losses and liabilities for which no single Participant is obligated, *i.e.,* a ''non-default loss.''

As discussed above, current Rule 4 currently provides a single set of tools and common processes for using the Participants Fund as both a liquidity resource and for the satisfaction of other losses and liabilities. The proposed rule change would provide separate liquidity and loss allocation provisions. More specifically, proposed Section 4 of Rule 4 would reflect the process for a ''pro rata settlement charge,'' the application of the Actual Participants Fund Deposits of non-defaulting Participants for liquidity purposes in order to complete settlement, when a Participant fails to satisfy its settlement obligation and the amount charged to its Actual Participants Fund Deposit by DTC pursuant to Section 3 of Rule 4 is insufficient to complete settlement. Proposed Section 5 of Rule 4 would contain the proposed loss allocation provisions.

Proposed Section 4

Pursuant to the proposed rule change, current Section 4 would be replaced in its entirety by proposed Section 4, and titled ''Application of Participants Fund Deposits of Non-Defaulting Participants.'' First, for clarity, proposed Section 4 would expressly state that ''The Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement among non-defaulting Participants in the event of the failure of a Participant to satisfy its settlement obligation on any Business Day. If the amount charged to the Actual Participants Fund Deposit of a Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement among non-defaulting Participants on that Business Day, the Corporation may apply the Actual Participants Fund Deposits of non-defaulting Participants as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility.''

Proposed Section 4 would retain the current principle that DTC must notify Participants and the Commission when it applies the Participants Fund deposits of non-defaulting Participants, by stating that if the Actual Participants Fund Deposits of non-defaulting Participants are applied to complete settlement, DTC must promptly notify each Participant and the Commission of the amount of the charge and the reasons therefor, and would define such notice as a Settlement Charge Notice.

Proposed Section 4 would retain the current calculation of pro rata charges by providing that each non-defaulting

Participant's [37] pro rata share of any such application of the Participants Fund, defined as a ''pro rata settlement charge,'' shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application [38] less its Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day.

Proposed Section 4 would also provide a period of time within which a Participant could notify DTC of its election to terminate its business with DTC and thereby cap its liability, by providing that a Participant shall have a period of five (5) Business Days following the issuance of a Settlement Charge Notice (''Settlement Charge Termination Notification Period'') to notify DTC of its election to terminate its business with DTC pursuant to proposed Section 8(a), and thereby benefit from its Settlement Charge Cap, as set forth in proposed Section 8(a).[39] Proposed Section 4 would also require that any Participant that gives DTC notice of its election to terminate its business with DTC must comply with proposed Section 6 of Rule 4,[40] and if it does not, its election to terminate shall be deemed void.

Proposed Section 4 would further provide that DTC may retain the entire amount of the Actual Participants Fund Deposit of a Participant subject to a pro rata settlement charge, up to the amount of the Participant's Settlement Charge Cap in accordance with proposed Section 8(a) of Rule 4.

Section 5 of current Rule 4 provides that ''Except as provided in Section 8 of this Rule, if a pro rata charge is made pursuant to Section 4 of the current Rule against the Required Participants Fund Deposit of a Participant, and, as a consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such deposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.''

Proposed Section 4 would incorporate Section 5 of current Rule 4, modified as follows: (i) Conformed to reflect the consolidation of Section 5 into proposed Section 4, (ii) replacement of ''Except as provided in'' with ''Subject to,'' to harmonize with language used elsewhere in proposed Rule 4, and (iii) corrections of two typographical errors, in order to accurately reflect that the Actual Participants Fund Deposit of a Participant would be applied, and not the Required Participants Fund Deposit, and to capitalize the word ''deposit'' because it is a defined term.

Proposed Section 5

Proposed Section 5 of Rule 4 would address the substantially new and revised proposed loss allocation, which would apply to losses and liabilities relating to or arising out of a Default Loss Event or a Declared Non-Default Loss Event. Pursuant to the proposed rule change, DTC would restructure and modify its existing loss allocation waterfall as described below. The heading ''Loss Allocation Waterfall'' would be added to proposed Section 5.

Proposed Section 5 would establish the concept of an ''Event Period'' to provide for a clear and transparent way of handling multiple loss events occurring in a period of ten (10) Business Days, which would be grouped into an Event Period. As stated above, both Default Loss Events and Declared Non-Default Loss Events could occur within the same Event Period.

The Event Period with respect to a Default Loss Event would begin on the day on which DTC notifies Participants that it has ceased to act for the Participant (or the next Business Day, if such day is not a Business Day). In the case of a Declared Non-Default Loss Event, the Event Period would begin on the day that DTC notifies Participants of the determination by the Board of Directors that the applicable loss or liability incident to the 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 clearance and settlement services in an orderly manner. Proposed Section 5 would provide that if a subsequent Default Loss Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period.

Under proposed Section 5, the loss allocation waterfall would begin with a new mandatory Corporate Contribution from DTC. Rule 4 currently provides that the use of any retained earnings and undivided profits by DTC is a voluntary contribution of a discretionary amount of its retained earnings. Proposed Section 5 of Rule 4 would, instead, require a defined corporate contribution to losses and liabilities that are incurred by DTC with respect to an Event Period. As proposed, the Corporate Contribution to losses or liabilities that are incurred by DTC with respect to an Event Period would be defined as an amount that is equal to fifty percent (50%) of the amount calculated by DTC in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.[41] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[42] 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.[43]

If DTC applies the Corporate Contribution to a loss or liability arising out of or relating to one or more Default Loss Events or Declared Non-Default Loss Events relating to an Event Period, then for any subsequent Event Periods that occur during the next two hundred fifty (250) Business Days, the Corporate Contribution would be reduced to the remaining unused portion of the Corporate Contribution amount that was applied for the first Event Period.[44] Proposed Section 5 would require DTC to notify Participants of any such reduction to the Corporate Contribution.

Proposed Section 5 of Rule 4 would provide that nothing in the Rules would prevent DTC from voluntarily applying amounts greater than the Corporate Contribution against any DTC loss or liability, if the Board of Directors, in its sole discretion, believes such to be

[37] *See supra* note 14.

[38] *See supra* note 15.

[39] *See supra* note 16.

[40] Proposed Section 6 is discussed below.

[41] *See supra* note 20.

[42] *See supra* note 21.

[43] 17 CFR 240.17Ad–22(e)(15).

[44] *See supra* note 24.

appropriate under the factual situation existing at the time.

Proposed Section 5 of Rule 4 would provide that DTC shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Default Loss Events and/or Declared Non-Default Loss Events that occur within an Event Period. The proposed rule change also provides that if losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, DTC would allocate such losses and liabilities to Participants, as described below.

Proposed Section 5 of Rule 4 would state that all Participants would be subject to loss allocation for losses and liabilities arising out of or relating to a Declared Non-Default Loss Event; however, in the case of losses and liabilities arising out of or relating to a Default Loss Event, only non-defaulting Participants would be subject to loss allocation. In addition, DTC is proposing to clarify that 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 6(b) of Rule 4 would be subject to loss allocations with respect to subsequent rounds relating to that Event Period. The proposed change would also provide that DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap in accordance with proposed Section 8(b) of Rule 4.

Pursuant to the proposed rule change, DTC would notify Participants subject to loss allocation of the amounts being allocated to them by a Loss Allocation Notice in successive rounds of loss allocations. Proposed Section 5 would state that 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 issuance of a Loss Allocation Notice. 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 Participant in that round has five (5) Business Days from the issuance of such first Loss Allocation Notice for the round [45] to notify DTC of its election to terminate its business with DTC pursuant to proposed Section 8(b) of Rule 4, and thereby benefit from its Loss Allocation Cap.[46]

Loss allocation obligations would continue to be calculated based upon a Participant's pro rata share of the loss.[47] As proposed, each Participant's pro rata share of losses and liabilities to be allocated in any round shall be equal to (i) (A) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the first day of the Event Period,[48] less (B) its Additional Participants Fund Deposit, if any, on such day, divided by (ii) (A) the sum of the Required Participants Fund Deposits of all Participants subject to loss allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less (B) the sum of any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.[49]

As proposed, Participants would have two (2) Business Days after DTC issues a first round Loss Allocation Notice to pay the amount specified in any such notice. In contrast to the current Section 4, under which DTC may apply the Actual Participants Fund Deposits of Participants directly to the satisfaction of loss allocation amounts, under proposed Section 5, DTC would require Participants to pay their loss allocation amounts (leaving their Actual Participants Fund Deposits intact).[50] On a subsequent round (*i.e.,* if the first round did not cover the entire loss of the Event Period because DTC was only able to allocate up to the sum of the Loss Allocation Caps of those Participants included in the round), Participants would also have two (2) Business Days after notice by DTC to pay their loss allocation amounts (again subject to their Loss Allocation Caps), unless a Participant timely notified (or will timely notify) DTC of its election to terminate its business with DTC with respect to a prior loss allocation round.

Under the proposal, if a Participant fails to make its required payment in respect of a Loss Allocation Notice by the time such payment is due, DTC would have the right to proceed against such Participant as a Participant that has failed to satisfy an obligation in accordance with proposed Section 3 of Rule 4 described above. Participants who wish to terminate their business with DTC would be required to comply with the requirements in proposed Section 6 of Rule 4, described further below. Specifically, proposed Section 5 would provide that if, after notifying DTC of its election to terminate its business with DTC pursuant to proposed Section 8(b) of Rule 4, the Participant fails to comply with the provisions of proposed Section 6 of Rule 4, its notice of termination would be deemed void and any further losses resulting from the applicable Event Period may be allocated against it as if it had not given such notice.

Section 6

Section 6 of Rule 4 currently provides that whenever a Participant ceases to be such, it continues to be obligated (a) to satisfy any deficiency in the amount of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including (i) any deficiency resulting from a pro rata charge with respect to which the Participant has given notice to DTC of its election to terminate its business with DTC pursuant to Section 8 of Rule 4 and (ii) any deficiency the Participant is required to satisfy pursuant to Sections 3 (an obligation that a Participant failed to satisfy) or 5 (the requirement of a Participant to eliminate the deficiency in its Required Participants Fund Deposit) of Rule 4 and (b) to discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Proposed Section 6 of Rule 4, titled ''Obligations of Participant Upon Termination,'' would consolidate the termination requirements from Section 6 of current Rule 4 into proposed Section 6(a), titled ''Upon Any Termination,'' and would modify them to conform to other proposed rule changes. Specifically, proposed Section 6(a) would state that, subject to proposed Section 8 of the Rule, whenever a Participant ceases to be

[45] *i.e.,* the Loss Allocation Termination Notification Period for that round.

[46] *See supra* note 31.

[47] *See supra* note 27.

[48] *Supra* note 15.

[49] *Supra* note 9.

[50] *See supra* note 30.

such, it shall continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to proposed Sections 3 or 4 of the Rule, and (ii) to discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Proposed Section 6(b), titled ''Upon Termination Following Settlement Charge or Loss Allocation,'' would state that if a Participant timely notifies DTC of its election to terminate its business with DTC in respect of a pro rata settlement charge as set forth in proposed Section 4 of Rule 4 or a loss allocation as set forth in proposed Section 5 of Rule 4 (''Termination Notice''), the Participant would be required to: (1) Specify in the Termination Notice a Participant Termination Date, which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period; (2) cease all activity that would result in transactions being submitted to DTC for clearance and settlement after the Participant Termination Date; and (3) ensure that all activities and use of DTC services for which such Participant may have any obligation to DTC cease prior to the Participant Termination Date.

DTC is proposing to include a sentence in proposed Section 6(b) to make it clear that if the Participant fails to comply with the requirements set forth in this section, its Termination Notice will be deemed void, and the Participant will remain subject to further pro rata settlement charges pursuant to proposed Section 4 of Rule 4 or loss allocations pursuant to proposed Section 5 of Rule 4, as applicable, as if it had not given such notice.

Section 8

Pursuant to the proposed rule change, Section 8 would be titled ''Termination; Obligation for Pro Rata Settlement Charges and Loss Allocations,'' and would be divided among proposed Section 8(a) ''Settlement Charges,'' proposed Section 8(b) ''Loss Allocations,'' proposed Section 8(c) ''Maximum Obligation,'' and proposed Section 8(d) ''Obligation to Replenish Deposit.''

Pursuant to proposed Section 8(a), if a Participant, within five (5) Business Days after issuance of a Settlement Charge Notice pursuant to proposed Section 4 of Rule 4, gives notice to DTC of its election to terminate its business with DTC, the Participant would remain obligated for (i) its pro rata settlement charge that was the subject of such Settlement Charge Notice and (ii) all other pro rata settlement charges made by DTC until the Participant Termination Date. Proposed Section 8(a) would provide that the terminating Participant's obligation would be limited to 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% of the amount thereof, which is substantively the same limitation as provided for pro rata charges in Section 8 of current Rule 4.[51]

Pursuant to proposed Section 8(b), if a Participant, within five (5) Business Days after the issuance of a first Loss Allocation Notice for any round pursuant to proposed Section 5 of Rule 4 gives notice to DTC of its election to terminate its business with DTC, the Participant shall remain liable for (i) the loss allocation that was the subject of such notice and (ii) all other loss allocations made by DTC with respect to the same Event Period. The obligation of a Participant which elects to terminate its business with DTC would be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof, which is substantively the same limitation as provided for pro rata charges in Section 8 of current Rule 4.[52]

Proposed Section 8(c) would provide that under no circumstances would the aggregate obligation of a Participant under proposed Section 8(a) and proposed Section 8(b) exceed the amount of its Aggregate Required Deposit and Investment, as fixed on the earlier of the (i) day of the pro rata settlement charge that was the subject of the Settlement Charge Notice giving rise to a Termination Notice, and (ii) first day of the Event Period that was the subject of the first Loss Allocation Notice in a round giving rise to a Termination Notice, plus 100% of the amount thereof. The purpose of proposed Section 8(c) is to address a situation where a Participant could otherwise be subject to both a Settlement Charge Cap and Loss Allocation Cap.

[51] *See supra* note 18.

[52] *See supra* note 33.

Proposed Section 8(d) would retain the last paragraph in Section 8 of current Rule 4, replacing ''pro rata charge'' with ''pro rata settlement charge'' and'' loss allocation.''[53] Proposed Section 8(d) would provide that if the amount of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy a pro rata settlement charge pursuant to proposed Section 4 and proposed Section 8(a) or a loss allocation pursuant to proposed Section 5 and proposed Section 8(b), the Participant would be obligated to Deposit the amount of any such deficiency to the Participants Fund notwithstanding the fact that the Participant subsequently ceases to be a Participant.

Section 9

Pursuant to the proposed rule change, proposed Section 9 of Rule 4 would provide that the recovery and repayment provisions in current Rule 4 apply to both pro rata settlement charges and loss allocations.[54] Specifically, proposed Section 9 would provide that if an amount is charged ratably pursuant to proposed Section 4 or allocated ratably pursuant to proposed Section 5 and such amount is recovered by DTC, in whole or in part, the net amount of the recovery shall be repaid ratably (on the same basis that it was originally charged or allocated) to the Persons against which the amount was originally charged or allocated by (i) crediting the appropriate amounts to the Actual Participants Fund Deposits of Persons which are still Participants and (ii) paying the appropriate amounts in cash to Persons which are not still Participants.

DTC further proposes to add the heading ''Recovery and Repayment'' to proposed Section 9.

C. Other Proposed Clarifying, Conforming and Technical Changes to Rule 4

Section 1

Section 1(a) and Section 1(b). Section 1(a) addresses, among other things, the formula for determining the Required Participants Fund Deposits of Participants. DTC is proposing to insert the words ''or wind-down'' to make it

[53] This is a ministerial change because this paragraph currently applies to Section 4 of current Rule 4, which includes charges to complete settlement and for loss allocation, as would be provided in proposed Section 4 and proposed Section 5 of Rule 4.

[54] This is a ministerial change because Section 9 currently applies to Section 4 of current Rule 4, which includes charges to complete settlement and for loss allocation, as would be provided in proposed Section 4 and proposed Section 5 of Rule 4.

clear that the formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit would be fixed by DTC so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for the costs and expenses incurred by it incidental to the wind-down of DTC, in addition to the voluntary liquidation of DTC.[55] Further, DTC proposes to delete the extraneous phrase ''if any.'' For increased clarity and readability, DTC is proposing to consolidate Section 1(b) into Section 1(a), and to relocate the sentences ''The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant.'' from Section 1(a) to a new proposed Section 1(b). In addition to the relocation, DTC would add a defined term for such additional amount, as ''Additional Participants Fund Deposit,'' for drafting convenience and transparency throughout proposed Rule 4. Further, DTC proposes to add the headings ''Required Participants Fund Deposits'' and ''Additional Participants Fund Deposits'' to Section 1(a) and proposed Section 1(b), respectively.

Section 1(c). For enhanced readability, DTC is proposing to add the heading ''Voluntary Participants Fund Deposits'' to Section 1(c) of Rule 4, and to replace the word ''as'' with ''in the manner.''

Section 1(d). For enhanced clarity, DTC is proposing to modify Section 1(d) to make it clear that any Additional Participants Fund Deposit is required to be in cash. DTC is also proposing to delete the extraneous phrase ''pursuant to this Section'' and to replace language regarding Section 2 of Rule 9(A) with the proposed defined term ''Additional Participants Fund Deposit.'' Further, DTC proposes to add the heading ''Cash Participants Fund'' to Section 1(d) of Rule 4.

Section 1(e). For enhanced clarity, DTC is proposing to add the language ''among Account Families'' to clarify the scope of the allocation described in Section 1(e). In addition, DTC proposes to add the heading ''Allocation of Participants Fund Deposits Among Account Families'' to Section 1(e) of Rule 4.

Section 1(f). Section 1(f) addresses, among other things, the permitted use of the Participants Fund. For consistency with the balance of Section 1(f), the first paragraph would be amended to state that the Actual Participants Fund Deposits of Participants ''may be used or invested'' instead of stating ''shall be applied.'' Section 1(f) provides, in part, that the Participants Fund is limited to the satisfaction of losses or liabilities of DTC incident to the business of DTC. Section 1(f) currently defines ''business'' with respect to DTC as ''the doing of all things in connection with or relating to [DTC's] performance of the services specified in the first and second paragraphs of Rule 6 or the cessation of such services.'' For enhanced transparency of the permitted uses of the Participants Fund, proposed Section 1(f) would be amended to explicitly state that the Actual Participants Fund Deposits of Participants may be used (i) to satisfy the obligations of Participants to DTC, as provided in proposed Section 3, (ii) to fund settlement among non-defaulting Participants, as provided in proposed Section 4 and (iii) to satisfy losses and liabilities of DTC incident to the business of DTC, as provided in proposed Section 5. Section 1(f) would also be amended to make the definition of ''business'' applicable to the entirety of Rule 4, instead of just Section 1(f), as the term would appear elsewhere in the rule pursuant to the proposed rule change. In addition, DTC proposes to add the heading ''Maintenance, Permitted Use and Investment of Participants Fund'' to Section 1(f) of Rule 4.

Section 1(g) (consolidated into proposed Section 1(f)). Pursuant to the proposed rule change, DTC would consolidate current Section 1(g) into proposed Section 1(f), and modify language to make it clear that DTC may invest cash in the Participants Fund in accordance with the Clearing Agency Investment Policy adopted by DTC.[56] Further, language would be streamlined by replacing ''securities, repurchase agreements or deposits'' with ''financial assets,'' and ''securities and repurchase agreements in which such cash is invested'' with ''its investment of such cash.''

Section 2

Pursuant to the proposed rule change, Section 2 of Rule 4 would be titled ''Participants Investment.''

Section 2(a)–2(d) (Proposed Section 2(a)). For clarity, DTC is proposing to consolidate Sections 2(b)–2(d) into proposed Section 2(a) and would add the heading ''Required Preferred Stock Investments'' to proposed Section 2(a). In addition, DTC proposes to modify certain language to update references and cross-references to specific subsections to reflect the proposed changes to the numbering of the subsections in proposed Section 2 of Rule 4.

Section 2(e) (Proposed Section 2(b)). For enhanced clarity, DTC is proposing to add the language ''among Account Families'' to clarify the scope of the allocation described in proposed Section 2(b). In addition, DTC proposes to add the heading ''Allocation of Preferred Stock Investments Among Account Families'' to proposed Section 2(b) of Rule 4.

Section 2(f) (Proposed Section 2(c)). DTC is proposing to add language to clarify that when any Pledge of a Preferred Stock Security Interest pursuant to proposed Section 2(c) of Rule 4 is made by appropriate entries on the books of DTC, the Rules, in addition to such entries, shall be deemed to be a security agreement for purposes of the New York Uniform Commercial Code. In addition, DTC proposes to update a cross-reference to proposed Section 2(c). In addition, DTC proposes to add the heading ''Security Interest in Preferred Stock Investments of Participants'' to proposed Section 2(c).

Sections 2(g)–2(i) (Proposed Sections 2(d)–2(f)). DTC proposes to add the headings ''Dividends on Preferred Stock Investments of Participants,'' ''Sale of Preferred Stock Investments of Participants,'' and ''Permitted Transfers of Preferred Stock Investments of Participants'' to proposed Sections 2(d), 2(e), and 2(f), respectively. Proposed Sections 2(e) and 2(f) would be modified to update cross-references to certain subsections. In addition, proposed Section 2(f) would be modified to renumber paragraphs and internal lists for consistency with the numbering schemes in Rule 4.

Section 7. For clarity, DTC is proposing to amend Section 7 of Rule 4 to (i) replace language referencing Additional Participants Fund Deposits with the proposed defined term, (ii) update cross-references to reflect proposed renumbering, and (iii) add the headings ''Increased Participants Fund Deposits and Preferred Stock

[55] On December 18, 2017, DTC submitted a proposed rule change and advance notice to adopt the Recovery & Wind-down Plan of DTC, and amend the Rules in order to adopt Rule 32(A) (Wind-down of the Corporation) and Rule 38 (Market Disruption and Force Majeure). *See* SR–DTC–2017–021 and SR–DTC–2017–803, which were filed with the Commission and the Board of Governors of the Federal Reserve System, respectively, *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[56] *See* Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR–DTC–2016–007).

Investments,'' ''Required Participants Fund Deposits,'' and ''Required Preferred Stock Investments'' to proposed Sections 7, 7(a) and 7(b) of Rule 4, respectively.

D. Proposed Changes to Rule 1

DTC is proposing to amend Rule 1 (Definitions; Governing Law) to add cross-references to proposed terms that would be defined in Rule 4, and to delete one defined term. The defined terms to be added are: ''Additional Participants Fund Deposit,'' ''Corporate Contribution,'' ''Declared Non-Default Loss Event,'' ''Default Loss Event,'' ''Event Period,'' ''Loss Allocation Cap,'' ''Loss Allocation Notice,'' ''Loss Allocation Termination Notification Period,'' ''Participant Default,'' ''Participant Termination Date,'' ''Settlement Charge Cap,'' ''Settlement Charge Notice,'' ''Settlement Charge Termination Notification Period,'' and ''Termination Notice''. The term ''Section 8 Pro Rata Charge'' would be deleted from Rule 1, because it would be deleted from proposed Rule 4 as no longer necessary.

Participant Outreach

Beginning in August 2017, DTC has conducted outreach to Participants in order to provide them with advance notice of the proposed changes. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

Implementation Timeframe

Pending Commission approval, DTC expects to implement this proposal promptly. Participants would be advised of the implementation date of this proposal through issuance of a DTC Important Notice.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [57] and Rules 17Ad–22(e)(7)(i), 17Ad–22(e)(13) and (e)(23)(i),[58] each as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the Rules be 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 DTC or for which it is responsible.[59] The proposed rule changes to (1) require a Corporate Contribution to a loss, (2) introduce an Event Period, and (3) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are intended to enhance the overall resiliency of DTC's loss allocation process

By replacing the discretionary application of DTC retained earnings to losses and liabilities with a mandatory and defined amount of the Corporate Contribution, the proposed rule change is designed to provide enhanced transparency and accessibility to Participants as to how much DTC would contribute in the event of a loss or liability. The proposed rule change also clarifies that the Corporate Contribution applies to both Default Loss Events and Declared Non-Default Loss Events. The proposed rule change would provide greater transparency as to the proposed replenishment period for the Corporate Contribution, which would allow Participants to better assess the adequacy of DTC's loss allocation process. Taken together, the proposed rule changes with respect to the Corporate Contribution would enhance the overall resiliency of DTC's loss allocation process by specifying the calculation and application of DTC's Corporate Contribution, including the proposed replenishment period, and would allow Participants to better assess the adequacy of DTC's loss allocation process.

By introducing the concept of an Event Period, DTC would be able to group Default Loss Events and Declared Non-Default Loss Events occurring within a period of ten (10) Business Days for purposes of allocating losses to Participants. DTC believes that the Event Period would provide a defined structure for the loss allocation process to encompass potential sequential Default Loss Events or Declared Non-Default Loss Events that may or may not be closely linked to an initial event and/or a market dislocation episode. Having this structure would enhance the overall resiliency of DTC's loss allocation process because the proposed rule would expressly address losses that may arise from multiple Default Loss Events and/or Declared Non-Default Loss Events that arise in quick succession. Moreover, the proposed Event Period structure would provide certainty for Participants concerning their maximum exposure to mutualized loss allocation with respect to such events.

By introducing the concept of ''rounds'' (and accompanying Loss Allocation Notices) and applying this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, DTC would (i) set forth a defined amount that it would allocate to Participants during each round (*i.e.,* the round cap), (ii) advise Participants of loss allocation obligation information as well as round information through the issuance of Loss Allocation Notices, and (iii) provide Participants with the option to limit their loss allocation exposure after the issuance of the first Loss Allocation Notice in each round. These proposed rule changes would enhance the overall resiliency of DTC's loss allocation process because they would expressly permit DTC to continue the loss allocation process in successive rounds until all of DTC's losses are allocated and enable DTC to identify continuing Participants for purposes of calculating subsequent loss allocation obligations in successive rounds. Moreover, the proposed rule changes would define for Participants a clear manner and process in which they could cap their loss allocation exposure to DTC.

Taken together, the foregoing proposed rule changes would establish a stronger (for all the reasons discussed above) and clearer loss allocation process for DTC, which DTC believes would allow it to take timely action to address losses. The ability to timely address losses would allow DTC to continue to meet its clearance and settlement obligations, especially in circumstances that may involve a series of substantially contemporaneous loss events. Therefore, DTC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

By reducing the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant, DTC would enable firms that have exited DTC to have access to their funds sooner than under current Rule 4 while maintaining the protection of DTC and its provision of clearance and settlement services. DTC would continue to be protected under the proposed rule change, which will maintain the provision that DTC may

[57] 15 U.S.C. 78q–1(b)(3)(F).

[58] 17 CFR 240.17Ad–22(e)(7)(i), (e)(13) and (e)(23)(i).

[59] 15 U.S.C. 78q–1(b)(3)(F).

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 to DTC, and would provide that DTC could retain the funds for up to two (2) years. As such, DTC would maintain a necessary level of coverage for possible claims arising in connection with the DTC activities of a former Participant. Therefore, DTC believes that this proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(7)(i) under the Act requires, in part, that DTC 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 DTC, 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.[60] By clarifying the remedies available to DTC with respect to a Participant Default, including the application of the Participants Fund as a liquidity resource, and by clarifying and providing the related processes, the proposed rule change is designed so that DTC may manage its settlement and funding flows on a timely basis and apply the Participants Fund as a liquid resource in order to effect same day settlement of payment obligations with a high degree of confidence. Therefore, DTC believes that the proposed rule changes with respect to the application of the Actual Participants Fund Deposits of non-defaulting Participants to complete settlement are consistent with Rule 17Ad–22(e)(7)(i) under the Act.

Rule 17Ad–22(e)(13) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure DTC has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[61] The proposed rule changes to (1) require a defined Corporate Contribution to a loss, (2) introduce an Event Period, (3) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are designed to enhance the resiliency of DTC's loss allocation process. Having a resilient loss allocation process would help ensure that DTC can effectively and timely address losses relating to or arising out of Default Loss Events and/or Declared Non-Default Loss Events, which in turn would help DTC contain losses and continue to conduct its clearance and settlement business. In addition, by providing clarity as to the application of the Participants Fund to fund settlement in the event of a Participant Default, the proposed rule change is designed to clarify that DTC is authorized to use the Participants Fund to fund settlement. Therefore, DTC believes that the proposed rule changes to enhance the resiliency of DTC's loss allocation process, and to provide clarity as to the application of the Participants Fund to fund settlement, are consistent with Rule 17Ad–22(e)(13) under the Act.

Rule 17Ad–22(e)(23)(i) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of DTC's default rules and procedures.[62] The proposed rule changes to (i) separate the provisions for the use of the Participants Fund for settlement and for loss allocation, (ii) make clarifying changes to the provisions regarding the application of the Participants Fund to complete settlement and for the allocation of losses, (iii) further align the loss allocation rules of the DTCC Clearing Agencies, (iv) improve the overall transparency and accessibility of the provisions in the Rules governing loss allocation, and (v) make technical and conforming changes, would not only ensure that DTC's loss allocation rules are, to the extent practicable and appropriate, consistent with the loss allocation rules of the other DTCC Clearing Agencies, but also would help to ensure that DTC's loss allocation rules are transparent and clear to Participants. Aligning the loss allocation rules of the DTCC Clearing Agencies would provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and clear loss allocation rules would enable Participants to better understand the key aspects of DTC's Rules and Procedures relating to Participant Default, as well as non-default events, and provide Participants with increased predictability and certainty regarding their exposures and obligations. As such, DTC believes that the proposed rule changes with respect to pro rata settlement charges, and to align the loss allocation rules across the DTCC Clearing Agencies and to improve the overall transparency and accessibility of DTC's loss allocation rules are consistent with Rule 17Ad–22(e)(23)(i) under the Act.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule changes to clarify the remedies available to DTC with respect to a Participant Default, including the application of the Participants Fund as a liquidity resource, and to clarify and provide the related processes, would impact competition.[63] The proposed rule changes retain the existing core concepts of the pro rata use of the Participants Fund deposits of non-defaulting Participants to complete settlement when a Participant fails to settle, and does not materially change their rights to elect to terminate their business with DTC and limit their exposure to settlement charges. Based on the foregoing, DTC believes that the proposed rule changes relating to pro rata settlement charges would not have any impact on competition.

DTC believes that the proposed rule change to replace the discretionary application of DTC retained earnings to losses and liabilities with a mandatory and defined Corporate Contribution would impact competition, but would not impose a burden on competition.[64] By requiring a defined corporate contribution to losses and liabilities that are incurred by DTC before the allocation of losses to Participants, the proposed rule change would relieve Participants of a defined amount of potential obligations, which would allow them to apply those resources elsewhere. Based on the foregoing, DTC believes that the proposed rule changes relating to the Corporate Contribution would not impose a burden on competition, but may promote competition.

DTC does not believe that the proposed rule changes to enhance the resiliency of DTC's loss allocation process would impact competition.[65] As described above, the proposed rule changes to (1) introduce an Event

[60] 17 CFR 240.17Ad–22(e)(7)(i).

[61] *Id.* at 240.17Ad–22(e)(13).

[62] *Id.* at 240.17Ad–22(e)(23)(i).

[63] 15 U.S.C. 78q–1(b)(3)(I).

[64] *Id.*

[65] *Id.*

Period, and (2) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are intended to enhance the overall resiliency of DTC's loss allocation process, and would apply equally to all Participants. Moreover, the proposed changes with respect to loss allocation retain the core concept of the allocation of losses and liabilities among Participants proportionally to the amount of risk that their activities present to DTC as measured by their Required Participants Fund Deposits.[66] Since there would not be a change to the mutualized obligations with respect to a loss arising from a Default Loss Event or Declared Non-Default Loss Event, the proposed rule changes with respect to loss allocation would not substantively affect the rights and obligations of Participants.

DTC believes that the proposed rule change to reduce the time after a Participant ceases to be a Participant within which DTC would be required to return the amount of the Actual Participants Fund Deposit of the former Participant may have an impact on competition, but would not impose a burden on competition.[67] This proposed rule change is intended to enable firms who have exited DTC to have use of their funds sooner, while at the same time retaining the existing requirements around the return. The reduction of the applicable timeframe from four (4) years to two (2) years would improve systemic efficiency by releasing the resources of the former Participant sooner, allowing them to allocate those resources where needed. Based on the foregoing, DTC believes the proposed rule change to reduce the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant would not impose a burden on competition, but may promote competition.

DTC also does not believe that the proposed rule changes to (i) further align the loss allocation rules of the DTCC Clearing Agencies, (ii) increase the transparency and accessibility of provisions in the Rules governing loss allocation, and (iii) make technical and conforming changes, would impact competition.[68] These changes would apply equally to all Participants. Further alignment of the loss allocation rules of the DTCC Clearing Agencies are intended to increase the consistency of the Rules with the rules of other DTCC Clearing Agencies in order to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and accessible provisions in the Rules governing loss allocation are intended to improve the readability and clarity of the Rules regarding the loss allocation process. Making technical and conforming changes to ensure the Rules remain clear and accurate would facilitate Participants' understanding of the Rules and their obligations thereunder. As such, DTC believes that these proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–DTC–2017–022 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–DTC–2017–022. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2017–022 and should be submitted on or before January 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00074 Filed 1–5–18; 8:45 am]

BILLING CODE 8011–01–P

[66] *Supra* note 9.

[67] 15 U.S.C. 78q–1(b)(3)(I).

[68] *Id.*

[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82433; File No. SR–DTC–2017–023]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Restore the Timeframe for Processing Credit Post-Payable Adjustments

January 2, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2017, The Depository Trust Company (''DTC'') 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 clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change by DTC would amend the Distributions Service Guide (''Guide'') [3] to (i) restore a practice of DTC relating to the timeframe for accepting a request from an issuer or its agent (''Paying Agent'') for a post-payable adjustment (''PPA'') of principal and income payments (''P&I'') that results in the allocation of additional credits to Accounts of affected Participants (''Credit PPA''), and (ii) make technical changes to the Guide, as more fully described below.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency 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.

[3] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Distributions-Service-Guide-FINAL-January-2017.pdf.*

[4] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf;* and in the Guide, *supra* note 3.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change by DTC would amend the Guide to (i) restore a practice of DTC relating to the timeframe for accepting a request from a Paying Agent for a Credit PPA, and (ii) make technical changes to the Guide, as more fully described below.

(i) Background

One of the core asset services provided by DTC is the daily collection and allocation of funds distributions on Securities held by DTC. Commonly referred to as P&I, these funds include dividend, interest, periodic principal, redemption, and maturity payments arising from the servicing of Securities held by DTC. DTC provides centralized processing to facilitate this service, and, on each Business Day, communicates with Paying Agents regarding the P&I due that day, collects payments, and allocates entitlements to Participants.

Occasionally, a Paying Agent may request a PPA at DTC due to an error on the part of the Paying Agent, trustee, issuer, or a change in the principle factor or rate. A PPA can result in debits (''Debit PPA'') and/or credits to Settlement Accounts of the affected Participants.

When DTC receives a request for a PPA from a Paying Agent,[5] DTC processes the debit and/or credit adjustments for the misapplied principal or income to the Settlement Accounts of affected Participants. Accordingly, affected Participants will need to process adjustments to their customers' accounts for any misapplied principal or income and any associated interest. In addition, affected Participants may need to process adjustments against any customer that traded the security after the initial payment had occurred.

Debit PPAs carry particular risks. When DTC processes a Debit PPA, it will automatically debit the Settlement Accounts of the affected Participants, which in turn must seek to collect the funds from their customers, which in turn may need to recover from end investors. This recovery process gets more difficult as time passes and creates significant credit exposure, as customers and the end investors may no longer have the funds to debit, or may have closed or moved their accounts.

Historically, DTC accommodated Paying Agent adjustment requests by processing PPAs (whether a Debit PPA, a Credit PPA, or both) up to one year after the initial payment was made (''One Year Cutoff''). In 2012, the Commission approved a DTC rule filing that implemented a practice whereby DTC would not accept a request for a PPA from a Paying Agent beyond ninety calendar days after the initial payment date (''Ninety-Day Cutoff'').[6] The purpose of shortening the timeframe was to mitigate the risks associated with PPAs, in particular Debit PPAs, by reducing the volume of PPAs and to allocate the accountability to the Paying Agents responsible for the PPAs.

[5] A request for a Credit PPA will only be processed by DTC on receipt of associated funds.

Under the current practice, if a Paying Agent wants to effectuate a PPA beyond the Ninety-Day Cutoff, it cannot be processed through DTC. The Paying Agent must request from DTC an allocation register listing all affected Participants and positions. Using the allocation register, the Paying Agent must then attempt to contact each affected Participant to make direct adjustments and/or payment arrangements outside of DTC.

(ii) Proposal To Restore the One Year Cutoff for Credit PPAs

After the Ninety-Day Cutoff became effective on January 1, 2015, a post-payable adjustment task force (''Task Force''), formed by DTC and comprised of Paying Agents and representative members of the Association of Global Custodians (''AGC''), the American Bankers Association, and the Corporate Actions division of the Securities Industry and Financial Market Association (''SIFMA''), monitored the PPA landscape. From that review, the Task Force determined that all parties—Paying Agents, issuers, Participants, investors—would benefit from restoring the timeframe for the processing of Credit PPAs (but not Debit PPAs) from the Ninety-Day Cutoff back to the original One Year Cutoff. The restoration of the PPA timeframe back to a One Year Cutoff for Credit PPAs would allow Paying Agents more time to make correct allocations to Participants efficiently through DTC, rather than requiring the Paying Agent to make the adjustments bilaterally with each Participant, outside of DTC. This efficiency would allow Participants, their customers, and end investors to receive their funds more quickly.

DTC and the Task Force determined to preserve the Ninety-Day Cutoff for

[6] Securities Exchange Act Release No. 67599 (August 6, 2012), 77 FR 47898 (August 10, 2012) (SR–DTC–2012–03). The implementation was staggered over the course of 2014. The Ninety-Day Cutoff was effective as of January 1, 2015.

Debit PPAs.[7] As described above, Debit PPAs create significant credit risk exposure for Participants, customers, and investors as more time passes, because it becomes more difficult for Participants to recover debited funds from their customers that may no longer have an account, may not have available funds, or may no longer service the end investor. By retaining the Ninety-Day Cutoff for Debit PPAs, DTC would be (i) maintaining the appropriate allocation of risk among Participants, their clients, investors, issuers and Paying Agents, (ii) creating proactive incentives for Paying Agents and issuers to reduce the number of Debit PPAs, and (iii) promoting payment finality.

For the reasons set forth above, DTC proposes to restore the timeframe for the processing of Credit PPAs from the Ninety-Day Cutoff back to a One Year Cutoff.[8] In addition, DTC proposes to modify the language of the Guide to (i) reflect a One Year Cutoff for Credit PPAs and a Ninety-Day Cutoff for Debit PPAs, and (ii) remove outdated language about the date of effectiveness of the Ninety-Day Cutoff.

(iii) Technical Changes to the Guide

DTC is also proposing to modify language in the Guide to (i) remove the statement that PPA adjustments will appear on Participant Statements, as adjustments can only be viewed using CA Web, ISO 20022 messages and CCF Files, (ii) for consistency with the term ''P&I'', add the word ''principal'' to the list of payments that may be subject to a PPA, and (iii) remove an incorrect reference to CMO/ABS securities.[9]

Outreach

DTC discussed the Task Force's recommendation to restore the timeframe for the processing of Credit PPAs to a One Year Cutoff with the SIFMA Corporate Action Section and AGC, which have agreed with the recommendation.

Implementation Date

DTC will implement the proposed rule change upon approval of this filing by the Commission.

[7] Under the proposed rule change, if DTC receives a PPA that would result in both credits to and debits from affected Participant accounts after the Ninety-Day Cutoff but before the One Year Cutoff for Credit PPAs, DTC would only process the credits (assuming associated funds were also received), and the Paying Agent would have to collect the debits outside of DTC.

[8] No other DTC practices with regard to PPAs would change, including without limitation, DTC's practice of servicing all court-directed adjustments (with appropriate supporting documentation), regardless of age.

[9] There can be a change in the principal factor or rate on any security, not just a CMO/ABS security.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[10]

Section 17A(b)(3)(F) of the Act requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions.[11] By restoring the timeframe back to a One Year Cutoff for the processing of Credit PPAs through DTC, DTC is providing centralized processing for Credit PPAs for a longer period of time, whereas Paying Agents would otherwise have to process the Credit PPAs outside of DTC after ninety days. In addition, the proposed rule change would make technical changes to the Guide, as described above, which would help ensure that the procedures relating to PPAs are accurate and consistent. Therefore, DTC believes that the proposed rule change would facilitate a more efficient process for Paying Agents to allocate funds, and for Participants to receive funds owed to them, as well as allow Participants to have a clearer understanding of the related procedures, thereby removing impediments to and perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change with respect to the Ninety-Day Cutoff for Credit PPAs would have any impact on competition because it would apply to all Paying Agents and would allow all Participants to receive their correct P&I credit allocations in a more efficient manner, and therefore would not disproportionately impact any Paying Agent or Participant.

DTC does not believe that the proposed rule change with respect to technical changes to the Guide would have any impact on competition because it would merely update the Guide to make changes for accuracy and consistency and therefore would not affect the rights and obligations of any Participant or other interested party.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] *Id.*

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–DTC–2017–023 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–DTC–2017–023. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2017–023 and should be submitted on or before January 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00081 Filed 1–5–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82429; File No. SR–CboeBZX–2017–021]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the First Trust Bitcoin Strategy ETF and the First Trust Inverse Bitcoin Strategy ETF, Each a Series of the First Trust Exchange-Traded Fund VII, Under Rule 14.11(i), Managed Fund Shares

January 2, 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 December 19, 2017, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to list and trade shares of the First Trust Bitcoin Strategy ETF and the First Trust Inverse Bitcoin Strategy ETF (each a "Fund" and, collectively, the "Funds"), each a series of the First Trust Exchange-Traded Fund VII (the "Trust"), under Rule 14.11(i) ("Managed Fund Shares"). The shares of the Funds are referred to herein as the "Shares."

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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 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 parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares of the First Trust Bitcoin Strategy ETF (the "Long Bitcoin Fund") and the First Trust Inverse Bitcoin Strategy ETF (the "Inverse Bitcoin Fund") under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[3]

The Shares will be offered by the Trust, which was organized as a Massachusetts business trust on November 6, 2012. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A ("Registration Statement") with the Commission.[4] The Adviser, as defined below, is also registered as a Commodity Pool Operator.

First Trust Advisors L.P. is the investment adviser (the "Adviser") to the Funds and a commodity pool operator ("CPO"). The Funds will be operated in accordance with applicable Commodity Futures Trading Commission ("CFTC") rules, as well as the regulatory scheme applicable to registered investment companies. Registration as a CPO imposes additional compliance obligations on the Adviser and the Funds related to additional laws, regulations, and enforcement policies.

Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[5] In

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission originally approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100).

[4] *See* Registration Statement on Form N–1A for the Trust, dated December 11, 2017 (File Nos. 333–184918 and 811–22767). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act") (the "Exemptive Order"). *See* Investment Company Act Release No. 30029, April 10, 2012 (File No. 812–13795). In addition, on December 6, 2012, the staff of the Commission's Division of Investment Management ("Division") issued a no-action letter ("No-Action Letter") relating to the use of derivatives by actively-managed exchange-traded funds ("ETFs"). *See* No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management. The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under applicable provisions of and rules under the 1940 Act if ETFs operating in reliance on specified orders (which include the Exemptive Order) invest in options contracts, futures contracts, or swap agreements provided that they comply with certain representations stated in the No-Action Letter.

[5] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the

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addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer, but is currently affiliated with a broker-dealer and, in the future may be affiliated with other broker-dealers. The Adviser has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to each Fund's portfolio. The Adviser personnel who make decisions regarding each Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding each Fund's portfolio. In the event that (a) the Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Bitcoin Futures Contracts

Prior to listing a new commodity futures contract, a designated contract market must either submit a self-certification to the CFTC that the contract complies with the Commodity Exchange Act (''CEA'') and CFTC regulations or voluntarily submit the contract for CFTC approval. This process applies to all futures contracts and all commodities underlying the futures contracts, whether the new futures contracts are related to oil, gold, or any other commodity.[6] On December 1, 2017, it was announced that both Cboe Futures Exchange, Inc. (''CFE'') and Chicago Mercantile Exchange, Inc. (''CME'') had self-certified with the CFTC new contracts for bitcoin[7] futures products.[8] While the CFE bitcoin futures contracts (''XBT Futures'')[9] and the CME bitcoin futures contracts (''CME Futures'')[10] will differ in certain of their implementation details, both contracts will generally trade and settle like any other cash-settled commodity futures contracts.[11]

The Exchange proposes to list the Funds pursuant to Rule 14.11(i), however there are two ways in which the Funds will not necessarily meet the listing standards included in that Rule. As such, the Exchange submits this proposal in order to allow each Fund to hold: (i) Listed derivatives in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b);[12] and (ii) Non-U.S. Component Stocks[13] in a manner that may not comply with Rule 14.11(i)(4)(C)(i)(b)(3)[14] and (4).[15] Otherwise, the Funds will comply with all other listing requirements of the Generic Listing Standards[16] for Managed Fund Shares on an initial and continued listing basis under Rule 14.11(i).

First Trust Bitcoin Strategy ETF

According to the Registration Statement, the Long Bitcoin Fund is an actively managed fund that seeks to provide investors with long exposure to the price movements of bitcoin instruments. Under Normal Market Conditions,[17] the Long Bitcoin Fund

investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[6] Section 1a(9) of the CEA defines commodity to include, among other things, ''all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.'' The definition of commodity is broad. 7 U.S.C. 1a(9).

[7] Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer bitcoin computer network (the ''Bitcoin Network''). No single entity owns or operates the Bitcoin Network; the infrastructure is collectively maintained by a decentralized user base. The Bitcoin Network is accessed through software, and software governs bitcoin's creation, movement, and ownership. The value of bitcoin is determined by the supply of and demand for bitcoin on websites that facilitate the transfer of bitcoin in exchange for government-issued currencies, and in private end-user-to-end-user transactions.

[8] Bitcoin is a commodity as defined in Section 1a(9) of the CEA. 7 U.S.C. 1a(9). *See In re* Coinflip, Inc., No. 15–29 (CFTC Sept. 17, 2015), *available at: http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliprorder09172015.pdf.*

[9] The XBT Futures are cash-settled futures contracts based on the auction price of bitcoin in U.S. dollars on the Gemini Exchange that will expire on a weekly, monthly and quarterly basis. XBT Futures are designed to reflect economic exposure related to the price of bitcoin. XBT Futures began trading on December 10, 2017.

[10] The CME Futures are also cash-settled futures contracts based on the CME CF Bitcoin Reference Rate, which is based on an aggregation of trade flow from several bitcoin spot exchanges, that will expire on a monthly and quarterly basis. CME Futures began trading on December 17, 2017.

[11] Bitcoin Futures Contracts (as defined herein) are measures of the market's expectation of the price of bitcoin at certain points in the future, and as such will behave differently than current or spot bitcoin prices. The Funds are not linked to bitcoin and in many cases the Funds could significantly underperform or outperform the price of bitcoin.

[12] Rule 14.11(i)(4)(C)(iv)(b) provides that ''the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).'' The Exchange is proposing that the Funds be exempt from the requirement of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

[13] The term ''Non-U.S. Component Stock'' means an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

[14] Rule 14.11(i)(4)(C)(i)(b)(3) provides that ''the most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio.'' As proposed, each Fund may hold as few as one Non-U.S. Component Stock, meaning that the Non-U.S. Component Stock could constitute 100% of the equity weight of the portfolio. As noted below, however, neither Fund will hold more than 25% of the weight of the portfolio in Non-U.S. Component Stocks.

[15] Rule 14.11(i)(4)(C)(i)(b)(4) provides that ''where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 total component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Derivative Securities Products or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares.'' While the Funds, as proposed, would be permitted to hold Derivative Securities Products or Linked Securities (both of which are ETPs, as defined below), they won't necessarily hold such instruments and may hold fewer than 20 Non-U.S. Component Stocks, which would not comply with this Rule.

[16] For purposes of this proposal, the term ''Generic Listing Standards'' shall mean the generic listing rules for Managed Fund Shares under Rule 14.11(i)(4)(C).

[17] The term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination

seeks to achieve its investment objective by investing in a portfolio of financial instruments that provide exposure to movements in the value of bitcoin. While the Long Bitcoin Fund intends to invest primarily in Bitcoin Futures Contracts,[18] it may also invest in other Listed Bitcoin Derivatives,[19] OTC Bitcoin Derivatives,[20] U.S. exchange-listed ETPs,[21] and Non-U.S. Component Stocks (collectively, ''Bitcoin Instruments''), cash and Cash Equivalents,[22] and U.S. government and agency securities with maturities of five years or less (''GSE Securities''). While the Long Bitcoin Fund intends to invest primarily in Bitcoin Instruments, the remainder of the Fund's assets will primarily be invested in cash, Cash Equivalents, and GSE Securities. The Long Bitcoin Fund intends to use such instruments as investments and, to the extent applicable, to collateralize the Fund's Bitcoin Instrument exposure on a day-to-day basis.[23]

First Trust Inverse Bitcoin Strategy ETF

According to the Registration Statement, the Inverse Bitcoin Fund seeks to provide investors with short exposure to the price movements of bitcoin instruments. Under Normal Market Conditions, the Inverse Bitcoin Fund seeks to achieve its investment objective by investing in a portfolio of financial instruments that provide short exposure to movements in the value of bitcoin.[24] While the Inverse Bitcoin Fund intends to invest primarily in Bitcoin Futures Contracts, it may also invest in Bitcoin Instruments,[25] cash and Cash Equivalents, and GSE Securities. While the Inverse Bitcoin Fund intends to invest primarily in Bitcoin Instruments, the remainder of the Inverse Bitcoin Fund's assets will primarily be invested in cash, Cash Equivalents, and GSE Securities. The Inverse Bitcoin Fund intends to use such instruments as investments and, to the extent applicable, to collateralize the Inverse Bitcoin Fund's Bitcoin Instrument exposure on a day-to-day basis.[26]

Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser[27] under the 1940 Act.[28] Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Under Normal Market Conditions, each Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).[29] Each Fund's

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of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows, the Long Bitcoin Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Long Bitcoin Fund may not be able to achieve its investment objective. The Long Bitcoin Fund may adopt a defensive strategy when the Adviser believes instruments in which the Long Bitcoin Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[18] For purposes of this proposal, the term ''Bitcoin Futures Contracts'' shall mean XBT Futures, CME Futures, and any other exchange-listed bitcoin futures contracts, as available.

[19] The term ''Listed Bitcoin Derivatives'' includes Bitcoin Futures Contracts and other listed derivatives (as provided in Rule 14.11(i)(4)(C)(iv)) including options contracts on Bitcoin Futures Contracts as well as options contracts, swap contracts, and other derivative instruments linked to bitcoin, the price of bitcoin, or an index thereof.

[20] The term ''OTC Bitcoin Derivatives'' includes over-the-counter options on bitcoin and bitcoin indices and over-the-counter swaps, including total return swaps on bitcoin, Bitcoin Futures, or bitcoin indices. The Exchange notes that the Long Bitcoin Fund's holdings in OTC Bitcoin Derivatives will meet the Generic Listing Standards related to OTC derivatives under Rule 14.11(i)(4)(C)(v).

[21] For purposes of this filing, the term ''ETP'' means Portfolio Depository Receipts, Index Fund Shares, Linked Securities, Trust Issued Receipts, and Managed Fund Shares, as defined in Rule 14.11(b), 14.11(c), 14.11(d), 14.11(f), and 14.11(i), respectively, and the analogous products and listing rules on other national securities exchanges.

[22] As defined in Rule 14.11(i)(4)(C)(iii), Cash Equivalents are short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[23] The Exchange notes that the Long Bitcoin Fund's holdings in cash, Cash Equivalents, and GSE Securities will meet the Generic Listing Standards related to fixed income securities and cash and cash equivalents under Rules 14.11(i)(4)(C)(ii) and (iii).

[24] On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows, the Inverse Bitcoin Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Inverse Bitcoin Fund may not be able to achieve its investment objective. The Inverse Bitcoin Fund may adopt a defensive strategy when the Adviser believes instruments in which the Inverse Bitcoin Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[25] The Exchange notes that the Inverse Bitcoin Fund's holdings in OTC Bitcoin Derivatives, which are included in the definition of Bitcoin Instruments, will meet the Generic Listing Standards related to OTC derivatives under Rule 14.11(i)(4)(C)(v).

[26] The Exchange notes that the Inverse Bitcoin Fund's holdings in cash, Cash Equivalents, and GSE Securities will meet the Generic Listing Standards related to fixed income securities and cash and cash equivalents under Rules 14.11(i)(4)(C)(ii) and (iii).

[27] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[28] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[29] Each Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. Each Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with each Fund's investment objective and policies. To mitigate leveraging risk, each Fund will segregate or earmark liquid assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board and in accordance with the 1940 Act or otherwise cover the transactions that give rise to such risk. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. *See* 15 U.S.C. 80a 18; Investment Company Act Release No. 10666 (April

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investments will not be used to seek leveraged or inverse leveraged returns (*i.e.* two times or three times the Fund's benchmark). Each Fund's use of derivative instruments will be collateralized or earmarked.

Additional Information

Each Fund's holdings will meet the Generic Listing Standards with two exceptions, and, as such, the Exchange submits this proposal in order to allow each Fund to hold: (i) listed derivatives in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b); [30] and (ii) Non-U.S. Component Stocks in a manner that may not comply with Rules 14.11(i)(4)(C)(i)(b)(3) [31] and (4).[32] The Exchange, however, believes that the policy concerns that these rules are intended to address are mitigated as they relate to the Funds and their holdings for a number of reasons.

First, the policy concerns underlying all three rules are mitigated by the fact that the Exchange believes that the underlying reference asset is not susceptible to manipulation because the nature of the bitcoin ecosystem makes manipulation of bitcoin difficult. The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and, in many instances, the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. Further, the Exchange believes that the fragmentation across bitcoin exchanges, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each exchange make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple bitcoin exchanges in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange. As a result, the potential for manipulation on a particular bitcoin exchange would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, bitcoin is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

Second, the Exchange believes that the concerns on which Rule 14.11(i)(4)(C)(iv)(b) are based related to ensuring that no single listed derivative and underlying reference asset that is susceptible to manipulation constitutes greater than 35% of the weight of the portfolio are further mitigated by the liquidity that the Exchange expects to exist in the market for Listed Bitcoin Derivatives. This belief is based on numerous conversations with market participants, issuers, and discussions with personnel of CFE. This expected liquidity in the market for Bitcoin Futures Contracts, the surveillance programs of the futures exchanges listing such Bitcoin Futures Contracts, Exchange surveillance procedures related to trading in the Shares, and CFTC oversight of the Bitcoin Futures Contracts, all combined with the difficulty in manipulating the bitcoin market described above will mitigate the concerns that Rule 14.11(i)(4)(C)(iv)(b) was designed to protect against and further prevent trading in the Shares from being susceptible to manipulation.

Third, the Exchange believes that the market cap and liquidity of the Non-U.S. Component Stocks held by the Funds along with a cap at 25% of each Fund's total assets that can be allocated to Non-U.S. Component Stocks would mitigate the concerns which Rules 14.11(i)(4)(C)(i)(b)(3) and (4) are intended to address. Any Non-U.S. Component Stock held by the Funds will have at least $100 million in market cap and will have a minimum global monthly trading volume of 250,000 shares, or a minimum global notional volume traded per month of $25 million, averaged over the last six months. This combination of large market cap with significant trading volume reduces the likelihood of manipulation of any particular security and the cap of 25% of the Fund's total assets assures that, while the Non-U.S. Component Stock holdings may not meet the concentration and diversity requirements of Rules 14.11(i)(4)(C)(i)(b)(3) and (4), respectively, such diversity and concentration requirements will not be met only for a limited portion of the portfolio.

The Exchange represents that, except for the diversification requirements for listed derivatives in Rule 14.11(i)(4)(C)(iv)(b) and the concentration and diversification requirements for Non-U.S. Component Stocks in Rules 14.11(i)(4)(C)(i)(b)(3) and (4), the Funds' proposed investments will satisfy, on an initial and continued listing basis, all of the Generic Listing Standards and all other applicable requirements for Managed Fund Shares under Rule 14.11(i). The Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares of the Funds. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. In addition, the Exchange represents that the Shares of the Funds will comply with all other requirements applicable to Managed Fund Shares, which includes the dissemination of key information such as the Disclosed Portfolio,[33] Net Asset Value,[34] and the Intraday Indicative Value,[35] suspension of trading or removal,[36] trading halts,[37] surveillance,[38] minimum price variation for quoting and order entry,[39] and the information circular,[40] as set forth in Exchange rules applicable to Managed Fund Shares. Moreover, at least 90% of the weight of the Listed Bitcoin Derivatives held by each Fund will consist of instruments that trade on markets that are a member of the Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place

18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

[30] *See* note 12, supra.

[31] *See* note 14, supra.

[32] *See* note 15, supra.

[33] *See* Rule 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

[34] *See* Rule 14.11(i)(4)(A)(ii).

[35] *See* Rule 14.11(i)(4)(B)(i).

[36] *See* Rule 14.11(i)(4)(B)(iii).

[37] *See* Rule 14.11(i)(4)(B)(iv).

[38] *See* Rule 14.11(i)(2)(C).

[39] *See* Rule 14.11(i)(2)(B).

[40] *See* Rule 14.11(i)(6).

a comprehensive surveillance sharing agreement. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. Quotation, intra-day, closing and settlement prices of Listed Bitcoin Derivatives will be readily available from their respective exchange or swap execution facility, as applicable, as well as through automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Quotation, intra-day, closing and settlement prices of U.S. exchange-listed ETPs will be readily available from the listing exchange, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Quotation information for OTC Bitcoin Derivatives may be obtained from brokers and dealers who make markets in such instruments. Quotation, intra-day, closing and settlement prices of Non-U.S. Component Stocks will be readily available from automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on Cash Equivalents and GSE Securities is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Additionally, the Listed Bitcoin Derivatives will be subject to the rules and surveillance programs of their respective listing venue and the CFTC.[41] Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Listed Bitcoin Derivatives with the ISG, other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[42] The Exchange may also obtain information regarding trading in the spot bitcoin market via exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). The Exchange prohibits the distribution of material non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[43] in general and Section 6(b)(5) of the Act[44] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will meet each of the initial and continued listing criteria in BZX Rule 14.11(i) except that each Fund may hold: (i) Listed derivatives in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b);[45] and (ii) Non-U.S. Component Stocks in a manner that may not comply with Rule 14.11(i)(4)(C)(i)(b)(3)[46] and (4).[47] The Exchange, however, believes that the policy concerns that these rules are intended to address are mitigated as they relate to the Funds and their holdings for a number of reasons.

First, the policy concerns underlying all three rules are mitigated by the fact that the Exchange believes that the underlying reference asset is not susceptible to manipulation because the nature of the bitcoin ecosystem makes manipulation of bitcoin difficult. The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and, in many instances, the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. Further, the Exchange believes that the fragmentation across bitcoin exchanges, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each exchange make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple bitcoin exchanges in order to take advantage of temporary price dislocations, thereby

[41] The CFTC issued a press release on December 1, 2017, noting the self-certifications from CFE and CME and highlighting the rigorous process that the CFTC had undertaken in its engagement with CFE and CME prior to the self-certification for the applicable Bitcoin Futures Contracts. The press release focused on the ongoing surveillances that will occur on each listing exchange, including surveillance based on information sharing with the underlying cash bitcoin exchanges as well as the actions that the CFTC will undertake after the contracts are launched, including monitoring and analyzing the size and development of the market, positions and changes in positions over time, open interest, initial margin requirements, and variation margin payments, stress testing positions, conduct reviews of designated contract markets, derivatives clearing organizations, clearing firms, and individual traders involved in trading and clearing bitcoin futures. For more information, *see http://www.cftc.gov/PressRoom/PressReleases/pr7654-17.*

[42] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. At least 90% of the weight of the Listed Bitcoin Derivatives held by each Fund will consist of instruments that trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[43] 15 U.S.C. 78f.

[44] 15 U.S.C. 78f(b)(5).

[45] *See* note 12, supra.

[46] *See* note 14, supra.

[47] *See* note 15, supra.

making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange. As a result, the potential for manipulation on a particular bitcoin exchange would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, bitcoin is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

Second, the Exchange believes that the concerns on which Rule 14.11(i)(4)(C)(iv)(b) are based related to ensuring that no single listed derivative and underlying reference asset that is susceptible to manipulation constitutes greater than 35% of the weight of the portfolio are further mitigated by the liquidity that the Exchange expects to exist in the market for Listed Bitcoin Derivatives. This belief is based on numerous conversations with market participants, issuers, and discussions with personnel of CFE. This expected liquidity in the market for Bitcoin Futures Contracts, the surveillance programs of the futures exchanges listing such Bitcoin Futures Contracts, Exchange surveillance procedures related to trading in the Shares, and CFTC oversight of the Bitcoin Futures Contracts, all combined with the difficulty in manipulating the bitcoin market described above will mitigate the concerns that Rule 14.11(i)(4)(C)(iv)(b) was designed to protect against and further prevent trading in the Shares from being susceptible to manipulation.

Third, the Exchange believes that the market cap and liquidity of the Non-U.S. Component Stocks held by the Funds along with a cap at 25% of each Fund's total assets that can be allocated to Non-U.S. Component Stocks would mitigate the concerns which Rules 14.11(i)(4)(C)(i)(b)(3) and (4) are intended to address. Any Non-U.S. Component Stock held by the Funds will have at least $100 million in market cap and will have a minimum global monthly trading volume of 250,000 shares, or a minimum global notional volume traded per month of $25 million, averaged over the last six months. This combination of large market cap with significant trading volume reduces the likelihood of manipulation of any particular security and the cap of 25% of the Fund's total assets assures that, while the Non-U.S. Component Stock holdings may not meet the concentration and diversity requirements of Rules 14.11(i)(4)(C)(i)(b)(3) and (4), respectively, such diversity and concentration requirements will not be met only for a limited portion of the portfolio.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Additionally, the Listed Bitcoin Derivatives will be subject to the rules and surveillance programs of their respective listing venue and the CFTC.[48] Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Listed Bitcoin Derivatives with the ISG, other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[49] The Exchange may also obtain information regarding trading in the spot bitcoin market via exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. The Exchange prohibits the distribution of material non-public information by its employees. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Adviser is not a registered broker-dealer, but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Exchange may obtain information regarding trading in the Shares and the underlying futures contracts held by the Funds via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[50] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's TRACE.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Exchange expects that the market for Bitcoin Futures Contracts will be sufficiently liquid to support numerous ETPs shortly after launch. This belief is based on numerous conversations with market participants, issuers, and discussions with personnel of CFE. As such, the Exchange believes that the expected liquidity in the market for Listed Bitcoin Derivatives combined with the Exchange surveillance procedures related to the Shares and the broader regulatory structure will prevent trading in the Shares from being susceptible to manipulation.

Because of its innovative features as a cryptoasset, bitcoin has gained wide acceptance as a secure means of exchange in the commercial marketplace and has generated significant interest among investors. In less than a decade since its creation in 2008, bitcoin has achieved significant market penetration, with payments giant PayPal and thousands of merchants and businesses accepting it as a form of commercial payment, as well as receiving official recognition from several governments, including Japan and Australia. Accordingly, investor interest in gaining exposure to bitcoin is increasing exponentially as well. As expected, the total volume of bitcoin transactions in the market continues to grow exponentially.

Despite the growing investor interest in bitcoin, the primary means for investors to gain access to bitcoin exposure remains either through the Listed Bitcoin Derivatives or direct investment through bitcoin exchanges or over-the-counter trading. For regular investors simply wishing to express an investment viewpoint in bitcoin, investment through the Listed Bitcoin Derivatives is complex and requires active management and direct investment in bitcoin brings with it significant inconvenience, complexity, expense and risk. The Shares would therefore represent a significant innovation in the bitcoin market by providing an inexpensive and simple vehicle for investors to gain long or short exposure to bitcoin in a secure and easily accessible product that is familiar and transparent to investors. Such an innovation would help to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest by improving investor access to bitcoin exposure

[48] *See* note 41, supra.

[49] *See* note 42, supra.

[50] *See* note 42, supra.

through efficient and transparent exchange-traded derivative products.

In addition to improved convenience, efficiency and transparency, the Funds will also help to prevent fraudulent and manipulative acts and practices by enhancing the security afforded to investors as compared to a direct investment in bitcoin. Despite the extensive security mechanisms built into the Bitcoin Network, a remaining risk to owning bitcoin directly is the need for the holder to retain and protect the ''private key'' required to spend or sell bitcoin after purchase. If a holder's private key is compromised or simply lost, their bitcoin can be rendered unavailable—*i.e.,* effectively lost to the investor. This risk will be eliminated by the Long Bitcoin Fund because the exposure to bitcoin is gained through cash-settled Listed Bitcoin Derivatives that do not present any of the security issues that exist with direct investment in bitcoin.

Additionally, the Funds may each hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, each Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will be available on each Fund's website including: (1) The prior business day's reported NAV, the Bid/Ask Price of the Fund, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds will be halted under the conditions specified in BZX Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BZX Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which the Shares of each Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. Quotation, intra-day, closing and settlement prices of Listed Bitcoin Derivatives will be readily available from their respective exchange or swap execution facility, as applicable, as well as through automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Quotation, intra-day, closing and settlement prices of U.S. exchange-listed ETPs will be readily available from the listing exchange, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Quotation information for OTC Bitcoin Derivatives may be obtained from brokers and dealers who make markets in such instruments. Quotation, intra-day, closing and settlement prices of Non-U.S. Component Stocks will be readily available from automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on Cash Equivalents and GSE Securities is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded product [sic] that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or affiliated with a member of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement as well as trade information for certain fixed income instruments as reported to FINRA's TRACE. At least 90% of the weight of the Listed Bitcoin Derivatives held by each Fund will consist of instruments that will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has 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 self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2017–021 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CboeBZX–2017–021. 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 will also 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–CboeBZX–2017–021 and should be submitted on or before January 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00077 Filed 1–5–18; 8:45 am]

BILLING CODE 8011–01–P

[51] 17 CFR 200.30–3(a)(12).

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub–No. 775X)]

CSX Transportation, Inc.—Abandonment Exemption—in Clark, Floyd, Lawrence, Orange, & Washington Counties, Ind.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F–*Exempt Abandonments* to abandon an approximately 62.3-mile rail line on its Northern Region, Louisville Division, Hoosier Subdivision between milepost 00Q 251.7, near Bedford, and milepost 00Q 314.0, near New Albany, in Clark, Floyd, Lawrence, Orange, and Washington Counties, Ind. (the Line). The Line traverses United States Postal Service Zip Codes 47150, 47172, 47106, 47143, 47165, 47167, 47108, 47452, 47446, and 47421 and serves the stations of Orleans (milepost 00Q 262), Leipsic (milepost 00Q 267), Campbellsburg (milepost 00Q 273), Salem (milepost 00Q 284), Pekin (milepost 00Q 295), and Borden (milepost 00Q 300). CSXT was previously granted authority to discontinue service over the Line.[1]

CSXT has certified that: (1) No local freight traffic has moved over the Line for at least two years; (2) any overhead traffic on the Line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 7, 2018, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 18, 2018. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 29, 2018, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

[1] *CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Clark, Floyd, Lawrence, Orange, & Wash. Ctys., Ind.,* AB 55 (Sub–No. 698X) (STB served Apr. 7, 2010).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,800. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update,* EP 542 (Sub–No. 25), slip op. App. C at 20 (STB served July 28, 2017).

CSXT has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by January 12, 2018. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been affected by CSXT's filing of a notice of consummation by January 8, 2019, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *WWW.STB.GOV.*

Decided: January 3, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–00137 Filed 1–5–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirty Seventh RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) Plenary Joint With EUROCAE WG–79

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

ACTION: Thirty Seventh RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) Plenary Joint with EUROCAE WG–79.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Thirty Seventh RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) Plenary Joint with EUROCAE WG–79.

DATES: The meeting will be held January 29, 2018, 10:00 a.m.–12:00 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW, Suite 910, Washington, DC 20036 and with virtual participation.

FOR FURTHER INFORMATION CONTACT: Rebecca Morrison at *rmorrison@rtca.org* or 202–330–0654, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Thirty Seventh RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) Plenary Joint with EUROCAE WG–79. The agenda will include the following:

Monday, January 29, 2018 10:00 a.m.–12:00 p.m.

1. Welcome/Administrative Duties
2. IPR/Membership Call-Out and Introductions
3. Consider a Motion To Begin Open Consultation/Final Review and Comment for the CVS MASPS
4. New Business
5. Review Action Items
6. Adjourn

Attendance is open to the interested public but limited to space availability. Webex connection information can be provided. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on January 2, 2018.

John Raper,

Manager, Partnership Contracts Branch, ANG–A17 (Acting), NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2018–00061 Filed 1–5–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Akron-Canton Airport, North Canton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 13.3 acres of airport land from aeronautical use to non-aeronautical use and to authorize the lease of airport property located at Akron-Canton Airport, North Canton, OH. The aforementioned land is not needed for aeronautical use. The parcel is located in the Northwest quadrant of the airport, immediately west of the Runway 19 approach surface with a property address of 2767 Greensburg Road, North Canton, OH. The parcel identification number is #2811553. The property is currently designated as aeronautical use for compatible land use in support of the airfield approach. The proposed non-aeronautical use is for commercial/general industrial development.

DATES: Comments must be received on or before February 7, 2018.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, Evonne M. McBurrows, 11677 South Wayne Road, Suite 107, Romulus, MI 48174. Telephone: (734) 229–2900/Fax: (734) 229–2950 and Akron-Canton Airport, 5400 Lauby Road NW #9, North Canton, OH. Telephone: (330) 499–4059.

Written comments on the Sponsor's request must be delivered or mailed to: Evonne M. McBurrows, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174, Telephone Number: (734) 229–2900/FAX Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Evonne M. McBurrows, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174. Telephone Number: (734) 229–2900/FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The property is currently designated as aeronautical use for compatible land use. This parcel of land (13.3 acres) was acquired with Passenger Facility Charge Program funds under PFC project number 99–04–C–00–CAK. Akron-Canton Regional Airport Authority (AA) proposed non-aeronautical use is for commercial/general industrial development. AA will lease the land and receive fair market value.

The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Akron-Canton Airport, North Canton, OH from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the change in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Legal Description For: Lease Parcel—13.3132 Acres Including Area in Public Right of Way and 12.8436 Acres Excluding Area in Public Right of Way.

Situated in the City of Green, County of Summit and State of Ohio:

Known as being part of the Northeast Quarter of Section 26 in Original Green Township, bounded and described as follows:

Beginning at an iron spike found at the intersection of the centerline of Greensburg Road (C.H. 133) width varies, and the west line of Northeast Quarter of Section 26;

Thence, N 82°38′36″ E, along the centerline of said Greensburg Road, a distance of 332.37 feet to the southeasterly comer of parcel number 28–11552 owned by A.K.C. Development Co., as recorded in document number 56194537 of Summit County records, said point being the Principal Point of Beginning;

Thence, N 01°01′04″ E, along the easterly line of said A.K.C. Property, a distance of 930.21 feet to a ⅝″ iron pin set; passing through a ⅝″ iron pin set at 33.36 feet;

Thence, S 89°34′34″ E, creating a new line, a distance of 650.60 feet to a ⅝″ iron pin set on the westerly line of property owned by Akron-Canton Regional Airport Authority, as recorded in document number 55559106 of Summit County Records;

Thence, S 00°24′54″ W, along the westerly line of said Akron-Canton Regional Airport Authority, a distance of 839.93 feet to a ⅝″ iron pin found at the point of intersection for the centerline of said Greensburg Road, passing through a ⅝″ iron pin set at 826.02 feet;

Thence, S 82°38′36″ W, along the centerline of said Greensburg Road, a distance of 666.51 feet to the Principal Place of Beginning and containing 13.3132 acres of land including area in the public right of way and 12.8436 acres of land excluding area in the public right of way, based on a survey conducted in January of 2017 by John R. Alban Professional Surveyor 7651.

Bearings are based upon an assumed meridian and are to be used for reference only.

All pins set are ⅝″ x 30″ rebar with yellow cap marked ''J. Alban 7651.''

Issued in Romulus, Michigan, on November 30, 2017.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2018–00128 Filed 1–5–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Akron-Canton Airport, North Canton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 7 acres of airport land from aeronautical use to non-aeronautical use and to authorize the lease of airport property located at Akron-Canton Airport, North Canton, OH. The aforementioned land is not needed for aeronautical use. The parcel is located in the Northeast quadrant of the airport, immediately east of the Runway 19 approach surface. The parcel identification number is #2815572. The property is currently designated as aeronautical use for compatible land use in support of the airfield approach area. The proposed non-aeronautical use is for recreational vehicle storage and sales facility.

DATES: Comments must be received on or before February 7, 2018.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, Evonne M. McBurrows, 11677 South Wayne Road, Suite 107, Romulus, MI 48174. Telephone: (734) 229–2900/Fax: (734) 229–2950 and Akron-Canton Airport, 5400 Lauby Road NW #9, North Canton, Ohio. Telephone: (330) 499–4059.

Written comments on the Sponsor's request must be delivered or mailed to: Evonne M. McBurrows, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174, Telephone Number: (734) 229–2900/FAX Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Evonne M. McBurrows, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174. Telephone Number: (734) 229–2900/FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The property is currently designated as aeronautical use for compatible land use. This parcel of land (7 acres) was acquired with Airport Improvement Program (AIP) federal funds under AIP Grant #6–39–0001–08. Akron-Canton Regional Airport Authority (AA) proposed non-aeronautical use is for recreational vehicle storage and sales facility. AA will lease the land and receive fair market value.

The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Akron-Canton Airport, North Canton, OH from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the change in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Description of a 7.006 Acre Lease Area

Situated in the City of Green, County of Summit, State of Ohio and being part of the Northwest Quarter of Section 25, of former Green Township, and being part of a 130.389 acre tract as conveyed to Akron-Canton Regional Airport Authority as recorded in Reception Number 55559106 of the Summit County Fiscal Office;

Commencing at a 1 inch bar in a monument box found at the intersection of the centerline of Mayfair Road (T.R. 244) with the centerline of Greensburg Road (C.H. 133);

Thence N 88°27′43′ W along the south line of said Northwest Quarter of Section 25 and the centerline of said Greensburg Road, a distance of 2602.75 feet to a point at the southwesterly corner of a 2.08 acre parcel conveyed to Overhead Door Corporation by Reception Number 55669449 of the

Summit County Fiscal Office and a southeasterly corner of said Akron-Canton Regional Airport Authority parcel;

Thence N 01°37′33″ E along the easterly line of said Akron-Canton Regional Airport Authority parcel and the westerly line of said Overhead Door Corporation parcel, a distance of 499.21 feet to a ⅝ inch rebar found at the northwesterly corner of said Overhead Door Corporation parcel (passing over a ⅝ inch rebar found on the north right of way line of said Greensburg Road at 61.25 feet), and being the *True Place Of Beginning* for the parcel herein described;

1. Thence N 01°37′33″ E on a new lease line and along the northerly extension of said westerly line of said Overhead Door Corporation parcel, a distance of 489.57 feet to a point on the easterly line of an area designated by said Akron-Canton Regional Airport Authority as ''RUNWAY 19 APPROACH AND PROTECTION ZONE (19 RPZ)'';

2. Thence N 10°18′22″ E on a new lease line and along the easterly line of said ''19 RPZ'', a distance of S 10.67 feet to a point on the southwesterly existing limited-access right of way line of Interstate 77 and the northeasterly line of said Akron-Canton Regional Airport Authority parcel;

3. Thence S 33°57′37″ E along the northeasterly line of said Akron-Canton Regional Airport Authority parcel and said limited access right of way line of Interstate 77, a distance of 554.65 feet to a ⅝ inch iron bar found at the northeast corner of said Akron-Canton Regional Airport Authority parcel and the northwest corner of a 7.706 acre parcel conveyed to Canton Green, LLC by Reception Number 55538275 of the Summit County Fiscal Office.

4. Thence S 01°37′33″ W along the easterly line of said Akron-Canton Regional Airport Authority parcel the westerly line of said Canton Green, LLC parcel, a distance of 542.51 feet to a ¾ inch iron pipe found at a southeast corner of said Akron-Canton Regional Airport Authority parcel and the northeast corner of a 1.04 acre parcel conveyed to Akron Canton Regional Airport Authority by Reception Number 54282080 of the Summit County Fiscal Office;

5. Thence N 88°29′31″ W along the northerly line of said 1.04 acre Akron-Canton Regional Airport Authority parcel and the northerly line of said Overhead Door Corporation parcel, a distance of 399.84 feet (passing over a ¾ inch iron pipe found at 184.77 feet) to the *True Place of Beginning*, and containing 7.006 acres more or less, of which 0.000 acres are within the road right of way, subject to all easements and right of ways of record or as otherwise established. This description is based on a field survey performed under the direction of Adam R. Zearley, P. S. #8594 of Hammontree & Associates, Limited, Engineers, Planners, and Surveyors of North Canton, Ohio in June, 2016.

The basis of bearings for this description the Ohio State Plane Coordinate System, Ohio North Zone, NAD83 (2011), Geoid 12A.

Issued in Romulus, Michigan, on November 30, 2017.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2018–00129 Filed 1–5–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On June 27, 2017, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to revise the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041), and the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than $1 Billion (FFIEC 051), which are currently approved collections of information. The Consolidated Reports of Condition and Income are commonly referred to as the Call Report. The proposed revisions to the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports would result in an overall reduction in burden.

The comment period for the June 2017 notice ended on August 28, 2017. As described in the **SUPPLEMENTARY INFORMATION** section, after considering the comments received on the proposal, the FFIEC and the agencies will proceed with the proposed reporting revisions to the FFIEC 031, FFIEC 041, and FFIEC 051. These reporting revisions relate to the deletion or consolidation of a large number of items, the raising of certain reporting thresholds, and a reduction in reporting frequency for a number of items. For small institutions filing the FFIEC 051 report, these changes affect approximately seven percent of the data items collected. The agencies will also proceed with the scope revision to the FFIEC 031 and FFIEC 041 reports to require all institutions with consolidated total assets of $100 billion or more, regardless of whether an institution has any foreign offices, to file the FFIEC 031. However, the agencies will delay the effective date of these reporting revisions and scope revision until the June 30, 2018, report date, rather than implementing them as of the March 31, 2018, report date, as originally proposed.

In addition, the agencies will proceed with the revisions to address the changes in the accounting for equity investments, with some modifications to the proposal in response to comments received. The effective date for these revisions would be the March 31, 2018, report date, as originally proposed, to coincide with the first reporting period in which the accounting changes will be adopted under U.S. generally accepted accounting principles (GAAP) by certain reporting institutions. Finally, because of concerns raised by commenters regarding the proposed revisions to the definition of ''past due'' assets for regulatory reporting purposes, the agencies are giving further consideration to this proposal, including its effect on and relationship to other regulatory reporting requirements, and are not proceeding with this proposed revision at this time.

The agencies are giving notice that they have sent the collection to OMB for review.

DATES: Comments must be submitted on or before February 7, 2018.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You may submit comments, which should refer to ''FFIEC 031, FFIEC 041, and FFIEC 051,'' by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Fax:* (571) 465–4326.
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may personally inspect and photocopy comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''FFIEC 031, FFIEC 041, and FFIEC 051,'' by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the reporting form numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''FFIEC 031, FFIEC 041, and FFIEC 051,'' by any of the following methods:

- *Agency website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's website.
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''FFIEC 031, FFIEC 041, and FFIEC 051'' in the subject line of the message.
- *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the Call Report discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, (202) 649–5490, or for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies propose revisions to data items reported on the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Numbers: FFIEC 031 (for banks and savings associations with domestic and foreign offices), FFIEC 041 (for banks and savings associations with domestic offices only), and FFIEC 051 (for banks and savings associations with domestic offices only and total assets less than $1 billion).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Control No.: 1557–0081.

Estimated Number of Respondents: 1,297 national banks and federal savings associations.

Estimated Average Burden per Response: 47.70 burden hours per quarter to file.

Estimated Total Annual Burden: 247,468 burden hours to file.

Board:

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 823 state member banks.

Estimated Average Burden per Response: 51.85 burden hours per quarter to file.

Estimated Total Annual Burden: 170,690 burden hours to file.

FDIC:

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 3,668 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 45.62 burden hours per quarter to file.

Estimated Total Annual Burden: 669,337 burden hours to file.

The proposed burden-reducing revisions to the Call Reports are the result of an ongoing effort by the agencies to reduce the burden associated with their preparation and filing and, as detailed in Appendices B, C, and D, achieve burden reductions by the removal or consolidation of numerous items, the raising of certain reporting thresholds, and a reduction in reporting frequency for certain items. The proposed revisions to the reporting of equity investments are consistent with changes in the accounting standards applicable to such investments.

The estimated average burden hours collectively reflect the estimates for the FFIEC 031, the FFIEC 041, and the FFIEC 051 reports. When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 123.06 (FFIEC 031), 57.71 (FFIEC 041), and 39.38 (FFIEC 051). The burden hours for the currently approved reports are 128.05 (FFIEC 031), 74.88 (FFIEC 041), and 44.94 (FFIEC 051),[1] so the revisions in this notice would represent a reduction in estimated average burden hours per quarter by 4.99 (FFIEC 031), 17.17 (FFIEC 041), and 5.56 (FFIEC 051). The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices).

Type of Review: Revision and extension of currently approved collections.

General Description of Reports

These information collections are mandatory pursuant to 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their missions of ensuring the safety and soundness of financial institutions and the financial system and the protection of consumer financial rights, as well as agency-specific missions affecting federal and state-chartered institutions, *e.g.,* monetary policy, financial stability, and deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. The agencies use Call Report data in evaluating institutions' corporate applications, including, in particular, interstate merger and acquisition applications for which, as required by law, the agencies must determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' and federal savings associations' semiannual assessment fees.

Current Actions

I. Introduction

On June 27, 2017, the agencies requested comment for 60 days on a proposal to revise the existing Call Report requirements (FFIEC 031, FFIEC 041, and FFIEC 051).[2] The June 2017 proposal, as well as the creation of the FFIEC 051 and other recent revisions to the FFIEC 031 and FFIEC 041, are the result of a formal initiative launched by the FFIEC in December 2014 to identify potential opportunities to reduce burden associated with Call Report requirements for community institutions. The most significant actions under this initiative are community institution outreach efforts, internal surveys of users of Call Report data at FFIEC member entities, and the implementation of a streamlined Call Report for small institutions. A summary of the FFIEC member entities' uses of the data items retained in the Call Report schedules subject to the reporting revisions in this proposal is included in Appendix A, which is repeated from the June 2017 notice with nonsubstantive technical corrections. Additional information about the initiative can be found in the June 2017 notice and in four earlier notices related to actions taken under this initiative.[3]

The comment period for the June 2017 notice ended on August 28, 2017. General comments on the notice are summarized in Section II. In Section III, the agencies provide more details on the comments received and any changes the agencies are making in response to those comments. Section IV discusses the timing for implementing the proposed revisions to the Call Report.

II. General Comments on the Proposed Call Report Revisions

The agencies collectively received comments on the proposal from 13 entities, including banking organizations, bankers' associations, and a government entity. General comments and recommendations on the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports are included in this section. The agencies provide information regarding comments on specific aspects of the proposed revisions to the Call Reports in more detail in Section III.

A. Comments on the Overall Proposal and the Burden-Reduction Initiative

Commenters expressed mixed opinions on the June 2017 notice and the agencies' Call Report burden-reduction initiatives to date. Seven commenters representing banking organizations and bankers' associations supported the effort put forth by the agencies. One bankers' association stated that it ''appreciates the time and effort the FFIEC has devoted to identifying opportunities to reduce the burdens associated with the Call Report requirements.'' The commenter went on to say that the removal or change in reporting frequency of line items or increase to reporting thresholds ''serves as needed clean-up of the Call Report.'' Three banking organizations also ''appreciate'' the agencies' initiatives focused on reducing the burden associated with the Call Reports. The government entity stated it uses certain data items in the Call Report in preparing national economic reports, and encouraged the agencies to continue collecting those items.

On the other hand, the majority of the comment letters asserted that the proposed revisions to the Call Reports would provide no real savings in effort or cost for smaller institutions and that the overall reduction in burden is of limited value to such institutions. One of the banking organizations and two of the bankers' associations further indicated that reducing reporting frequency would provide only ''limited relief.'' These commenters noted that regardless of whether cumulative data is reported every quarter or every six months, institutions would still need to gather the data on a quarterly basis in order to produce the reported data on a semiannual basis. Two bankers' associations responded that combining data items also would not provide any relief to institutions, because processes are already in place to gather the information separately. One banking organization and one bankers' association stated that the proposed revisions would increase burden due to the system changes that would be necessary to modify the processes currently in place, such as deactivating or reactivating each quarter the reporting of data items that would

[1] See 82 FR 2444.

[2] See 82 FR 29147 (June 27, 2017).

[3] See 80 FR 56539 (September 18, 2015), 81 FR 45357 (July 13, 2016), 81 FR 54190 (August 15, 2016), and 82 FR 2444 (January 9, 2017).

change from a quarterly to a semiannual or annual reporting frequency.

The agencies recognize that not all institutions would see an immediate and large reduction in burden from the proposed revisions in the June 2017 notice. However, reducing the frequency of collection for certain data items or consolidating existing data items into fewer data items would result in institutions spending less time completing the Call Report since there would be fewer items to review prior to each quarterly submission. Also, an institution would have fewer instructions to review to determine whether it has reportable (nonzero) amounts. To the extent that an institution currently tracks granular data items that are proposed to be consolidated, there may be limited burden relief from consolidating the items. However, institutions that currently track data at an aggregate level and then must allocate that amount to the existing subcategories every quarter would see additional burden relief. Accordingly, these changes represent meaningful Call Report burden relief to institutions that do not engage in complex activities.

Furthermore, as previously mentioned, internal surveys of users of Call Report data at FFIEC member entities, including staff of the agencies, were one of the significant actions under the FFIEC's community bank Call Report burden-reduction initiative. The survey responses have been the foundation for the statutorily mandated review of the existing Call Report data items [4] that the agencies have been conducting over the course of the burden-reduction initiative. After completing this review, the statute directs the agencies to ''reduce or eliminate any requirement to file information or schedules . . . (other than information or schedules that are otherwise required by law)'' if the agencies determine that ''the continued collection of such information or schedules is no longer necessary or appropriate.'' The findings from the agencies' review revealed that certain information is no longer needed from some or all institutions, either on a quarterly basis or at all, and that the current level of detail is no longer needed from some or all institutions in certain Call Report schedules. Accordingly, for those Call Report data items for which the results of the statutorily mandated review have triggered these conclusions, the agencies are removing, consolidating, or reducing the reporting frequency of, or creating a new or increased reporting threshold for, the affected Call Report data items notwithstanding any system changes that institutions would need to make in response to these reporting changes.

Finally, in an effort to address the concerns of institutions relating to the proposed reductions in frequency from quarterly to semiannual, the agencies note that the FFIEC's Central Data Repository (CDR) [5] allows institutions to submit data quarterly, even if the data items are only required to be reported semiannually or annually. This will permit institutions to choose to avoid any perceived burden needed to reduce the reporting frequency from the quarterly frequency required in the existing Call Report.

B. General Recommendations From Commenters

Three commenters suggested the agencies adopt a ''short-form'' Call Report to be filed for at least two quarters of the year. The short-form Call Report recommended by two of these commenters would consist only of an institution's balance sheet, income statement, and statement of changes in equity capital. The institution would file a full Call Report including all supporting schedules in the second and fourth quarters, and the short-form Call Report in the first and third quarters. The third commenter recommended including a limited number of additional schedules in the first and third quarters to report more detailed information on loans and regulatory capital, with additional schedules filed in the second and fourth quarters.

While the agencies understand the commenters' desire for a short-form Call Report, the agencies did not adopt this suggestion for the reasons noted in response to the comment letters received on the August 2016 proposal for a streamlined Call Report for small institutions.[6] Most notably, in addition to the basic financial statements, the most streamlined quarterly report possible must also include data items required by law or regulation, along with quarterly data necessary for adequate supervision by the agencies. Furthermore, the agencies leverage a significant amount of the data reported quarterly in the more detailed general and supplemental Call Report schedules when conducting off-site monitoring and determining the scope and frequency of on-site examinations. Limiting the information collected on these schedules to semiannual could significantly impair the agencies' supervisory planning and review processes and potentially lead to a less efficient use of supervisory resources.

One commenter recommended that the FFIEC establish an industry advisory committee to develop advice and guidance on the Call Report and establish a regular forum to address technical questions and new changes to the Call Report. In response, the agencies plan to continue to offer outreach in connection with significant revisions to the Call Report, as they did with the adoption of the revised Schedule RC–R, Regulatory Capital, and with the implementation of the FFIEC 051. The agencies also receive and respond to a number of questions from individual institutions each quarter. Issues that could affect multiple institutions are often addressed through the Call Report Supplemental Instructions published quarterly or updates to the Call Report instruction book published as needed. Consistent with the PRA, the agencies also offer an opportunity for members of the banking industry to comment on proposed changes to the Call Report or to make any additional suggestions for improving, streamlining, or clarifying the Call Report.

One commenter recommended that the agencies align the proposed revisions in the Call Report with revisions to the FR Y–9C report for holding companies.[7] The commenter stated that having differences in reporting between the Call Report and FR Y–9C can create burden for reporting firms. The agencies agree that aligning proposed revisions in the Call Report with proposed revisions to comparable data items collected in the consolidated FR Y–9C report would reduce burden for reporting holding companies. The Board will take this comment into consideration when it develops proposed revisions to the FR Y–9C report.

One commenter recommended that the agencies increase the asset-size threshold for filing the FFIEC 051 Call Report from the current $1 billion to at least $10 billion, indexed for inflation. Raising the threshold to $10 billion or higher at this time could result in a significant loss of data necessary for supervisory or other purposes from institutions with assets above $1 billion.

[4] This review is mandated by section 604 of the Financial Services Regulatory Relief Act of 2006 (12 U.S.C. 1817(a)(11)).

[5] The CDR is a secure, shared application for collecting, managing, validating, and distributing data reported in the Call Report and the FDIC's annual Summary of Deposits survey (OMB No. 3064–0061). The CDR also processes and distributes the Uniform Bank Performance Report.

[6] See 82 FR 2444 (January 9, 2017).

[7] Consolidated Financial Statements for Holding Companies, OMB No. 7100–0128.

Therefore, while the agencies are not adopting this recommendation at this time, the agencies are continuing to evaluate the appropriate scope and criteria for expanding the number of institutions eligible to file the FFIEC 051.

The agencies received three comment letters from banking organizations that highlighted the burden required for their institutions to prepare Schedule RC–R, Regulatory Capital. Reporting on Schedule RC–R is directly tied to the requirements in the agencies' regulatory capital rules.[8]

The agencies recently issued a proposal for modifications to simplify the regulatory capital rules.[9] To the extent changes contained in that proposal are adopted in a final rule, the agencies would incorporate those simplifications into Schedule RC–R.

One commenter stated that Schedule RC–C, Part II, is particularly burdensome to complete and should be eliminated. The agencies previously reduced the frequency of this schedule from quarterly to semiannual for institutions filing the FFIEC 051.[10] However, the agencies cannot eliminate this schedule because the submission of information on small business and small farm loans is specifically required by statute.[11] Appendix A to the agencies' January 2017 **Federal Register** notice (82 FR 2444) provides information about how the agencies use the data reported in Schedule RC–C, Part II.

III. Specific Comments on the Proposed Call Report Revisions

A. Scope Revision

The agencies proposed to revise the scope of the FFIEC 031 Call Report to require all institutions with consolidated total assets of $100 billion or more to file this form, regardless of whether an institution has any foreign offices. The agencies proposed this change because institutions with consolidated total assets of $100 billion or more without foreign offices are considered to have a similar degree of complexity in their activities as institutions of this size with foreign offices that currently file the FFIEC 031.

The agencies received two comments opposing the proposed scope revision. One bankers' association stated that the proposal could be viewed as creating three Call Reports for larger banks, which could create a problem if the reports evolve and do not remain aligned in the future. Another bankers' association opposed the agencies' use of a size-based threshold alone (*i.e.,* $100 billion or more in assets) to revise the scope of the FFIEC 031, rather than looking at the business model and risk profile of an institution.

The agencies are proceeding with the proposed scope revision of the FFIEC 031 to include all institutions with foreign offices and all institutions with consolidated total assets of $100 billion or more. The agencies note that this revision would affect only five institutions, as the majority of institutions with assets of $100 billion or more also have foreign offices and currently file the FFIEC 031. Currently, the FFIEC 031 and FFIEC 041 collect the same information on an institution's domestic office activities. When preparing the FFIEC 031, institutions with no foreign offices would not need to report items that request information on foreign offices, including the entirety of Schedules RI–D; RC–E, Part II; and RC–I; nor would they need to complete Schedule RC–H, which collects certain domestic office data. These institutions also would report the same amounts for ''domestic offices'' and ''consolidated bank'' in other schedules that request this breakout, which would not require these institutions to compile additional information. In addition, there is currently a single set of Call Report instructions for both the FFIEC 031 and FFIEC 041, which helps promote consistency in reporting between those versions of the Call Report and should reduce the burden of a transition for the affected institutions. As noted in the June 2017 notice, the agencies consider all institutions with $100 billion or more in total assets to be of similar complexity. Institutions of this size typically have similar business activities and risk profiles for their domestic operations, and the agencies' examiners review these domestic operations in a similar manner. Receiving information from all institutions in this size category on the same Call Report form will improve the agencies' ability to perform comparisons among these institutions' domestic operations. This proposed scope revision also has enabled the agencies to propose removing items from, or consolidating a significant number of items in, the FFIEC 041 form,[12] as the agencies believe these items are no longer necessary based on the business activities and risk profiles of institutions with domestic offices only and consolidated total assets less than $100 billion.

B. Burden-Reducing Revisions

The agencies received two comments from banking organizations on the proposed revisions to Schedule RI–E to reduce the reporting frequency of the data items for significant components of ''other noninterest income'' and ''other noninterest expense'' from quarterly to annual in the FFIEC 051 and increase the percentage threshold for reporting individual components in all three versions of the Call Report. One commenter noted this revision would actually reduce burden in preparing the reports. The other commenter stated that his organization does not meet the existing thresholds to separately report noninterest income and expense components on that schedule, so the reporting burden would not change.

After considering these specific comments, as well as the comments received on the overall proposal and the burden-reduction initiative that were discussed in Section II.A. above, the agencies will proceed with the proposed burden-reducing changes to Schedule RI–E, along with all other burden-reducing changes to Call Report schedules proposed in the June 2017 notice. The agencies recognize that not every proposed change will reduce burden for every institution. However, the agencies believe that the proposed changes will reduce burden in the Call Reports as a whole, which is also reflected in a reduction in the estimated burden hours per quarter for the Call Reports.

C. Instructional Revision for the Reporting of Assets as ''Past Due''

Under the current Call Report instructions, closed-end installment loans, amortizing loans secured by real estate, and other loans and lease financing receivables with payments scheduled monthly are to be reported as past due in Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, when the borrower is in arrears two or more monthly payments. This means that a loan is to be reported as past due if two monthly payments have not been received by the close of business on the due date of the second monthly payment. Similarly, the Call Report instructions provide that open-end credit such as credit cards, check credit, and other revolving credit plans are to be reported as past due when the customer has not made the minimum payment for two or more billing cycles. The instructions also provide that, at an institution's option, loans and leases with payments scheduled monthly may

[8] 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

[9] 82 FR 49984 (October 27, 2017).

[10] See 82 FR 2444 (January 9, 2017).

[11] See section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242.

[12] See 82 FR 51908 (November 8, 2017).

be reported as past due when one scheduled payment is due and unpaid for 30 days or more.

The agencies note there is an existing widely used industry standard, known as the Mortgage Bankers Association (MBA) method, which provides that loans with payments scheduled monthly become 30 days past due if a monthly payment is not received by the end of the day immediately preceding the loan's next due date. The agencies understand that the MBA method is used by most major mortgage data repositories, including the three major credit bureaus and two major mortgage loan data processing service bureaus used by institutions. The MBA method is also used by reporting forums such as the MBA, McDash Analytics, and the OCC Mortgage Metrics Reports.

Therefore, to promote the use of a consistent standard in the industry and reduce the burden for certain institutions calculating past-due loans under two methods (*i.e.,* one method for Call Report purposes and a different method for other reporting purposes), the agencies proposed in the June 2017 notice to modify the definition of ''past due'' for regulatory reporting purposes that is currently contained in the general instructions of Schedule RC–N to align with the MBA method. Specifically, under that proposal, closed-end installment loans, amortizing loans secured by real estate, and other loans and lease financing receivables with payments scheduled monthly, as well as open-end credit such as credit cards, check credit, and other revolving credit plans with payments scheduled monthly, would be reported as past due in Schedule RC–N if a payment is not received by the end of the day immediately preceding the loan's next payment due date.

The agencies received comments from two bankers' associations and three banking organizations regarding the proposed instructional revision to the definition of ''past due.'' These commenters generally opposed the proposed revision. All commenters cited increased burden related to operational difficulties to implement the change as well as concerns about how this definitional change would flow through to or affect other reporting requirements. Operational challenges cited by commenters include substantial processing system changes; the need to modify contracts with third-party vendors, loan securitization agreements, and other legal agreements; communication issues with loan servicing customers; and coordination issues with third-party vendors to implement the proposed revision. Other related reporting concerns include possible restatements of audited financial statements and filings with the Securities and Exchange Commission; the effect on the calculation of the allowance for loan and lease losses; the impact on the risk weighting associated with delinquent and nonaccrual loans as reported on Schedule RC–R, Regulatory Capital; the use of performing loans as inputs for stress testing and recovery and resolution planning purposes; the impact on liquidity reporting; and the impact on the calculation of surcharge scores assessed to global systemically important banks (G–SIBs). Additionally, one bankers' association stated that the proposed instructional change would remove the current reporting flexibility for institutions to use a combination of actual-day count, the MBA method, and the current Call Report method based on the institutions' particular portfolios.

Based on the issues raised in the comments received on the proposed instructional revision to the definition of past due, the agencies are giving further consideration to this proposal, including its effect on and relationship to other regulatory reporting requirements. Accordingly, the agencies are not proceeding with this proposed instructional revision and the existing instructions for the definition of past due will remain in effect.

D. Proposed Call Report Revisions To Address Changes in Accounting for Equity Investments

In January 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016–01, ''Recognition and Measurement of Financial Assets and Financial Liabilities.'' As one of its main provisions, the ASU requires certain investments in equity securities (including other ownership interests, such as interests in partnerships, unincorporated joint ventures, and limited liability companies) to be measured at fair value with changes in fair value recognized in net income (fair value through net income).

Section 37(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(a)) states that, in general, the accounting principles applicable to the Call Report ''shall be uniform and consistent with generally accepted accounting principles.'' The agencies are maintaining consistency with U.S. GAAP by implementing the provisions of ASU 2016–01 in the Call Report in accordance with the effective dates set forth in the ASU. For institutions that are public business entities, as defined in U.S. GAAP, ASU 2016–01 is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. For all other institutions, the ASU is effective for fiscal years beginning after December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019.

Based on their consideration of the changes in the accounting for equity investments under ASU 2016–01 and the effect of these changes on the manner in which data on equity securities and other equity investments are currently reported in the Call Report, the agencies proposed to revise the reporting of information on equity securities and other equity investments in Call Report Schedules RI, Income Statement; RI–D, Income from Foreign Offices (on the FFIEC 031); RC, Balance Sheet; RC–B, Securities; RC–F, Other Assets; RC–H, Selected Balance Sheet Items for Domestic Offices (on the FFIEC 031); RC–K, Quarterly Averages; RC–Q, Assets and Liabilities Measured at Fair Value on a Recurring Basis (on the FFIEC 041 and FFIEC 031); and RC–R, Regulatory Capital.[13]

In developing the proposed revisions to these Call Report schedules, the agencies sought to limit the number of data items being added to the Call Report to address the changes in accounting for equity securities and other equity investments.

Furthermore, because of the different effective dates for ASU 2016–01 for public business entities and all other entities, as well as the varying fiscal years across the population of institutions that file Call Reports, the period over which institutions will be implementing this ASU ranges from the first quarter of 2018 through the fourth quarter of 2020. As a result, the agencies proposed to introduce the revisions to the reporting of information on equity securities and other equity investments in response to the ASU in the Call Report effective March 31, 2018.

The agencies received comments from two banking organizations and two bankers' associations addressing the proposed Call Report revisions related to equity securities. Both bankers' associations expressed general support for the proposed changes to reporting of information on equity securities and other equity investments. However, for an institution that has adopted the new accounting standard, the associations sought clarification of the appropriate categorization on the proposed revised Call Report balance sheet (Schedule RC)

[13] See 82 FR 29158–29159 (June 27, 2017) for complete descriptions of the proposed revisions to these schedules.

of equity securities with readily determinable fair values that are bought and sold on a regular basis, but are not held with the intention of trading as this term is defined in the agencies' market risk rules.[14] The agencies note that, for purposes of categorizing assets and liabilities on the Call Report balance sheet, they do not apply the trading definition in the market risk rules. Rather, the Call Report instructions state that:

> Trading activities typically include (a) regularly underwriting or dealing in securities; interest rate, foreign exchange rate, commodity, equity, and credit derivative contracts; other financial instruments; and other assets for resale, (b) acquiring or taking positions in such items principally for the purpose of selling in the near term or otherwise with the intent to resell in order to profit from short-term price movements, and (c) acquiring or taking positions in such items as an accommodation to customers or for other trading purposes.[15]

Thus, when an institution's holdings of equity securities with readily determinable fair values fall within the scope of the preceding description of trading activities, the equity securities should be reported as trading assets in Schedule RC, item 5. Otherwise, the equity securities should be reported in new item 2.c, ''Equity securities with readily determinable fair values not held for trading.'' The agencies will modify the Call Report instructions to make this distinction more clear.

One banking organization noted that the proposal aligns the Call Report with the new accounting standard for equity investments, but it requested clarification of the balance sheet categorization of money market mutual funds following the adoption of the accounting standard. This organization observed that the Securities and Exchange Commission's rules permit such funds to be categorized as cash equivalents in financial statements filed with the Commission if appropriate criteria are met. The organization asked whether the agencies intended to permit a similar categorization for Call Report purposes. The Call Report does not recognize cash equivalents as part of ''Cash and balances due from depository institutions,'' as described in the instructions for Schedule RC, item 1. Thus, for Call Report purposes, an institution that has adopted ASU 2016–01 should report its investments in money market mutual funds with readily determinable fair values, which are considered equity securities for accounting purposes,[16] in new Schedule RC, item 2.c, provided these investments are not held for trading (as discussed above). The agencies also will revise the Call Report instructions to clarify the reporting of money market mutual funds as equity securities, not as cash.

The other banking organization supported the proposed changes to the income statement for reporting unrealized holding gains (losses) on equity securities not held for trading, but recommended excluding unrealized gains on equity securities from tier 1 capital for regulatory capital purposes as is currently the case under today's accounting standards. The manner in which unrealized gains on equity securities are reported for regulatory capital purposes in Call Report Schedule RC–R depends entirely on how these unrealized gains are treated under the agencies' regulatory capital rules. After an institution adopts ASU 2016–01, unrealized gains on the institution's investments in equity securities with readily determinable fair values not held for trading will be recognized in net income and, hence, retained earnings. Because retained earnings is a common equity tier 1 (CET1) capital element under the agencies' regulatory capital rules, the operation of these rules will automatically result in the inclusion of all unrealized gains on such equity securities in CET1 capital after an institution's adoption of ASU 2016–01. Continuing to exclude unrealized gains on equity securities with readily determinable fair values not held for trading from CET1 capital after the adoption of ASU 2016–01 would require revisions to the agencies' regulatory capital rules and is outside the scope of the proposed equity securities reporting changes in the Call Report.

This banking organization also recommended retaining the existing regulatory framework governing investments in stock set forth in section 362.3 of the FDIC's regulations (12 CFR 362.3) and the related information on equity securities currently reported in Call Report Schedule RC–B, Securities. More specifically, under section 362.3(a) of the FDIC's regulations, an insured state bank may not ''directly or indirectly acquire or retain as principal any equity investment of a type that is not permissible for a national bank.'' However, this regulation provides for the grandfathering of certain investments in equity securities by insured state banks if certain conditions are met, including approval by the FDIC. The equity investments that are authorized to be grandfathered are common and preferred stock listed on a national securities exchange and shares of an investment company registered under the Investment Company Act of 1940.[17] However, the FDIC's regulations provide that an insured state bank's aggregate investment in these authorized investments ''shall in no event exceed, when made, 100 percent of the bank's tier one capital'' and that ''[t]he lower of the bank's cost as determined in accordance with call report instructions or the market value'' of the authorized investments ''shall be used to determine compliance.'' [18] At present, the cost basis and fair value of an insured state bank's grandfathered equity investments are included in the amounts reported in available-for-sale columns C and D, respectively, of Call Report Schedule RC–B, item 7, ''Investments in mutual funds and other equity securities with readily determinable fair values.'' These two Schedule RC–B items currently serve as the starting point for assessing compliance with the limit on grandfathered equity investments at those insured state banks that have received FDIC approval to hold such investments. However, in their June 2017 proposal, the agencies proposed to remove item 7, columns C and D, from Schedule RC–B effective December 31, 2020. From March 31, 2018, through September 30, 2020, institutions that have adopted ASU 2016–01 would leave Schedule RC–B, item 7, columns C and D, blank.[19] The fair value of the ''Investments in mutual funds and other equity securities with readily determinable fair values'' that these institutions had reported in Schedule RC–B, item 7, column D, before adopting ASU 2016–01 would instead be reported in new item 2.c, ''Equity securities with readily determinable fair values not held for trading,'' on Schedule RC, Balance Sheet. However, under the June 2017 proposal, the cost of the equity securities reported in Schedule RC–B, item 7, column C, until an institution's adoption of ASU 2016–

[14] The market risk rules define a ''trading position'' as a position held ''for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits.'' See 12 CFR 3.202 (OCC), 12 CFR 217.202 (Board), and 12 CFR 324.202 (FDIC).

[15] See the instructions for Schedule RC, item 5, ''Trading assets,'' the General Instructions for Schedule RC–D, Trading Assets and Liabilities, and the Glossary entry for ''Trading Account'' in the Call Report instructions.

[16] See FASB Accounting Standards Codification paragraph 321–10–55–7.

[17] 12 CFR 362.3(a)(2)(iii)(A).

[18] 12 CFR 362.3(a)(2)(iii)(C).

[19] During this period, only those institutions that have not yet adopted ASU 2016–01 would complete Schedule RC–B, item 7, columns C and D.

01 would no longer be reported after the institution's adoption of this new accounting standard because the standard eliminates the existing concept of available-for-sale equity securities. Thus, the banking organization that commented on the issue of grandfathered equity investments recommended the retention of the Call Report data items used to measure compliance with the aggregate investment limit in these authorized investments.

After considering this banking organization's recommendation as well as the provisions of section 362.3(a) of the FDIC's regulations, the agencies agree that, after its adoption of ASU 2016–01, an insured state bank that has been approved to hold authorized investments should continue to report the cost of their holdings of equity securities with readily determinable fair values not held for trading, which such an institution currently reports as available-for-sale securities in column C of Schedule RC–B, item 7. The continued collection of this cost information from insured state banks with grandfathered equity investments serves a long-term regulatory purpose by aiding the supervisory staffs of the agencies that supervise these insured state banks in performing their ongoing assessments of compliance with the aggregate limit on such investments. Accordingly, in place of Schedule RC–B, item 7, column C, which would no longer be applicable to institutions after their adoption of ASU 2016–01, and which would ultimately be removed effective December 31, 2020, the agencies would add a new item 4, ''Cost of equity securities with readily determinable fair values not held for trading,'' to Schedule RC–M effective March 31, 2018. The new Schedule RC–M item would be completed only by insured state banks that have adopted ASU 2016–01 and have been approved to hold grandfathered equity investments. All other institutions would leave new Schedule RC–M, item 4, blank. The equity securities for which the cost would be reported in Schedule RC–M, item 4, would be the same equity securities for which institutions that have adopted ASU 2016–01 would report the fair value in new Schedule RC, item 2.c.

In addition, as previously mentioned, the agencies also received three comments from banking organizations regarding the burden associated with Schedule RC–R, Regulatory Capital, which is one of the schedules for which several revisions related to equity securities were proposed. In this regard, a proposed change to this schedule was to add a new item 2.c, ''Equity securities with readily determinable fair values not held for trading,'' to Schedule RC–R, Part II, Risk-Weighted Assets, effective March 31, 2018. As proposed, this new item would be completed only by institutions that had adopted ASU 2016–01 and, for such institutions, Schedule RC–R, Part II, item 2.b, ''Available-for-sale securities,'' should include only debt securities. Effective December 31, 2020, which is the quarter-end report date as of which all institutions would be required to have adopted ASU 2016–01, the caption for item 2.b would be revised to ''Available-for-sale debt securities.'' These proposed revisions correspond to the changes the agencies proposed to make to the categories of securities reported on Schedule RC, Balance Sheet.

The commenters who addressed Schedule RC–R recommended simplifying and shortening the schedule to reduce burden. After considering the concerns expressed by commenters about the burden of Schedule RC–R in relation to the proposed revisions to this schedule for equity securities, the agencies have decided against adding a new item 2.c to Part II of Schedule RC–R. Instead, the agencies would retain the existing risk-weighting reporting process under which those equity securities with readily determinable fair values and debt securities currently categorized as available-for-sale securities are reported together in item 2.b of Schedule RC–R, Part II. To clarify the scope of item 2.b for institutions that have and have not adopted ASU 2016–01, the agencies would change the caption for item 2.b to ''Available-for-sale debt securities and equity securities with readily determinable fair values not held for trading'' effective March 31, 2018.

All the other revisions to the reporting of information on equity securities and other equity investments proposed by the agencies in response to the changes in the accounting requirements for these types of assets would be implemented as described in Section III.D.2 of the June 2017 proposal and would take effect beginning as of March 31, 2018.[20]

IV. Timing

Subject to OMB approval, the effective date for the implementation of the revisions to the FFIEC 031, FFIEC 041, and FFIEC 051 to address the change in accounting for equity investments would be March 31, 2018. However, the effective date for the implementation of all other revisions described in this notice would be June 30, 2018.

The agencies originally proposed to implement the revisions proposed in the June 2017 notice, as well as those they expected to propose based on their evaluation of the responses to the third and final portion of user surveys, as of March 31, 2018. However, on November 8, 2017, the agencies proposed that the effective date for the latter set of changes would be the June 30, 2018, report date.[21] Commenters on the June 2017 and prior Call Report notices have described the burden associated with implementing frequent revisions to the Call Report. Therefore, the agencies are delaying the burden-reducing revisions in this proposal until June 30, 2018, to align with the target implementation of the burden-reducing Call Report revisions published on November 8, 2017. This way, institutions will only need to adjust their reporting processes for one combined set of revisions effective for the June 30, 2018, Call Report rather than separate sets of revisions in March and June 2018. However, ASU 2016–01 is effective for public business entities for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. This necessitates that the proposed equity securities reporting revisions be implemented in the Call Report in the first quarter of 2018 so that institutions required to, or electing to, adopt the new accounting standard at that time are able to report in accordance with that standard in the March 31, 2018, Call Report.

When implementing the burden-reducing Call Report revisions as of the June 30, 2018, report date, institutions may provide reasonable estimates for any new or revised Call Report data item initially required to be reported as of that date for which the requested information is not readily available. In addition, as of the March 31, 2018, report date or a subsequent report date as of which an institution is required to, or early elects to, initially report in accordance with ASU 2016–01, the institution may provide reasonable estimates for any new or revised Call Report data item affected by the equity securities reporting changes for which the requested information is not readily available. The specific wording of the captions for the new or revised Call Report data items discussed in this proposal and the numbering of these data items is subject to change.

[20] 82 FR 29147, 29156–29159.

[21] See 82 FR 51908 (November 8, 2017).

V. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Appendix A—Summary of the FFIEC Member Entities' Uses of the Data Items in the Call Report Schedules in the Portion of the User Surveys Evaluated in the Development of This Proposal

Schedule RI–D (Income from Foreign Offices) [FFIEC 031 only]

Schedule RI–D collects data on income from foreign offices. Collectively, the data are used in country and currency risk analyses to monitor the level, trend, quality and sustainability of the income component of foreign offices. These data help support a variety of examination activities that include, but are not limited to, earnings and yield analysis, asset securitizations, core assessment, price risk, and trading. Quarterly data also improve the off-site monitoring of trading and asset management activities. Data on investment banking, advisory, brokerage, and underwriting fees and commissions are used to track the global asset management activities of institutions with foreign offices. The global presence of these activities adds to the complexity of the asset management business conducted by financial institutions and this information is continually monitored to detect potential shifts in business models. It also serves as one component of measurement of the degree of global interconnectedness and systemic risk.

Schedule RI–E (Explanations)

Schedule RI–E collects explanations for items that significantly contribute to the total amounts reported for other noninterest income and other noninterest expense. Since other noninterest income makes up almost half of total noninterest income and other noninterest expense makes up approximately 40 percent of noninterest expense on an aggregate basis for all filers of the Call Report, data on the composition of each of these income statement data items is essential to understanding what is driving the level of and changes over time in these data items at individual institutions. The stratification of the information in this schedule allows for identification of potential unusual sources of changes in earnings that affect trend analyses. This information is particularly important for identifying losses of an unusual or nonrecurring nature when an institution is in a stressed condition, which was evident during the recent financial crisis. This stratified noninterest income and expense information continues to be critical in understanding the causes of swings in an institution's profitability.

Schedule RI–E also collects descriptive information on discontinued operations, significant adjustments to the allowance for loan and lease losses (ALLL), accounting changes and error corrections, and certain capital transactions with stockholders. These data items provide the agencies and their examiners better insight on factors driving changes in net income and the ALLL (due to sources other than provisions, charge-offs, and recoveries), along with nonrecurring types of changes in institutions' equity capital.

The detailed breakdown of components of other noninterest income in excess of the Schedule RI–E reporting threshold is essential to the Consumer Financial Protection Bureau's (CFPB) understanding of the viability of institutions' offerings of consumer services regulated by the CFPB. This information provides unique insights into institutions' reliance on key revenue streams that can impact consumer access to and the availability of services. These streams include bank and credit card interchange, income and fees from automated teller machines, and institution-described components of other noninterest income. This information also helps the CFPB monitor trends in the consumer marketplace. Similarly, the detailed breakdown of other noninterest expense facilitates the CFPB's ability to conduct statutorily-required cost analyses for rulemakings and other policy endeavors.

Schedule RC–B (Securities)

Information collected on Schedule RC–B is essential for assessment of liquidity risk, market risk, interest rate risk, and credit risk. Specifically, information on held-to-maturity, available-for-sale, and pledged securities is critical for analysis of the institution's ability to manage short-term financial obligations without negatively impacting capital or income (liquidity risk), and risk of loss due to market movements (market risk). Maturity and repricing information on debt securities collected in the Memorandum items on Schedule RC–B, together with the maturity and repricing information collected in other schedules for other types of assets and liabilities, is critical for the assessment of the risk to an institution from changes in interest rates (interest rate risk), and also contributes to the evaluation of liquidity. Thus, the maturity and repricing information collected throughout the Call Report also aids in evaluating the strategies institutions take to mitigate liquidity and interest rate risks. Liquidity and interest rate risk indicators that are calculated by agency models from an institution's Call Report data and exceed specified parameters or change significantly between examinations are red flags that call for timely examiner off-site review.

In this regard, the reported amount of debt securities with a remaining maturity of one year or less is a key input into the calculation of an institution's short-term assets that, when analyzed in conjunction with non-core funding data, can indicate the extent to which the institution is relying on short-term funding to fund longer-term assets, which presents an exposure to liquidity risk. Further, liquidity risk inputs into agency models that vary by type of security provide examiners the ability to customize and apply liquidity stress tests. Extensive back testing has shown that the liquidity risk inputs for securities contain substantial forward-looking information by which to ascertain the likelihood that an institution would be able to avoid significant liquidity problems in a stressed environment.

As another example, agency models that consider both the amortized cost and fair value of held-to-maturity and available-for-sale securities reported in Schedule RC–B are used for off-site monitoring of interest rate risk to identify individual institutions that may be significantly exposed to rising interest rates. Individual types of securities from Schedule RC–B are grouped into major categories for purposes of performing duration-based analyses of potential investment portfolio depreciation for both severe and more moderate interest rate increases. The Schedule RC–B data for these groupings of securities, together with Call Report data for other types of balance sheet assets and liabilities, also serve as inputs to quarterly duration-based estimates of potential changes in fair values for the overall balance sheet in response to various forecasted interest rate changes. Outlier institutions identified by these models are the subject of prompt supervisory follow-up to address their interest rate risk exposure.

The institution's risk profile in these areas is considered during pre-examination planning to determine the appropriate scoping and staffing for examinations. For example, the quarterly reporting of the Call Report information on held-to-maturity and available-for-sale securities also aids in the identification of low-risk areas prior to on-site examinations, allowing the agencies to improve the allocation of their supervisory resources and increase the efficiency of supervisory assessments, which reduces the scope of examinations in these areas, thereby reducing regulatory burden.

Information on the amortized cost and fair value of the securities portfolio allows for measurement of depreciation/appreciation, which is important for assessing the potential impact that unrealized gains and losses may have on earnings and liquidity. Unrealized gains and losses on available-for-sale equity securities and, for certain institutions, unrealized gains and losses on available-for-sale debt securities are an integral input into regulatory capital calculations. Furthermore, because the amount of unrealized gains and losses on both held-to-maturity and available-for-sale debt securities is an indicator of risk in the debt securities portfolio, it also is a key factor in examiners' qualitative assessments of capital adequacy.

Data showing significant depreciation in specific types of securities not issued or guaranteed by the U.S. government or its agencies can signal an institution's failure to properly evaluate the existence of other-than-temporary impairments arising from credit losses and other factors. Similarly, data on year-to-date sales and transfers of held-to-maturity securities is a basis for off-site or on-site follow-up by examiners to determine whether the reasons for these transactions are acceptable under U.S. GAAP or have resulted in the tainting of this securities portfolio. In addition, the reporting of debt securities by security type is important to identify concentrations in higher risk types of investments, which may have greater liquidity and/or credit risk than other types of securities. Information on investments in securities issued by states and political subdivisions in the United States is used by many state regulatory agencies as a starting point for monitoring compliance with certain state municipal investment regulations. The amortized cost and fair value of held-to-maturity and available-for-sale debt securities, respectively, for certain types of securities as well as the fair value of all U.S. Treasury and U.S. Government agency securities are used in the risk-based premium deposit insurance pricing methodology for large institutions and highly complex institutions.

Schedule RC–D (Trading Assets and Liabilities) [FFIEC 031 and FFIEC 041 only]

Schedule RC–D collects information on trading activity from institutions with more than a limited amount of trading assets in recent quarters. Trading assets are segmented into detailed securities and loan categories. Trading liabilities separately cover liability for short positions and other trading liabilities. The schedule's Memorandum items request additional information, including the unpaid principal balance of loans and the fair value of structured financial products and asset-backed securities held for trading purposes.

The information contained in Schedule RC–D is used to assess the overall composition of the institution's trading portfolio and also provides detailed information to evaluate the liquidity, credit, and interest rate risk within the trading portfolio, which impacts the overall risk profile of the institution. Data on the types of trading assets held by an institution—such as U.S. Treasury securities versus structured financial products versus commercial and industrial loans, for example—serve as a barometer of the relative levels of these risks in the trading portfolio. Regarding liquidity risk, the higher the level of more liquid assets an institution has within its trading portfolio, the more financial flexibility it has if faced with uncertainties or unfavorable market conditions. If an institution has a low level of liquid assets within its trading portfolio, this impacts its ability to rapidly adjust its holdings in response to adverse market movements. Information on the volume and composition of trading assets and how it has changed over recent quarters also can provide insight into an institution's trading strategies and its views on market trends. The assessment of trading portfolio composition and risks enters into pre-examination planning to determine the appropriate scoping and staffing for examinations of institutions engaged in trading activities.

Furthermore, data on securities and loans held for trading are combined with data on securities and loans held for investment, as reported in Schedule RC–B and Schedule RC–C, Part I, to benchmark weekly loan and security data collected by the Board from a sample of both small and large institutions. These weekly data are used to estimate weekly measures of extension of credit for the banking sector as a whole to provide a more timely input for purposes of monitoring the macroeconomy.

Information on mortgage-backed securities and mortgage loans held for trading assisted the CFPB's efforts to develop required estimates for various Title XIV mortgage reform rulemakings under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203). Going forward, data items from this schedule and Schedules RC–B and RC–C, Part I, are critical for continuous monitoring of the mortgage market. The CFPB uses these items to understand the intricacies of the mortgage market that are essential to assessing institutional participation in regulated consumer financial services markets and to assess regulatory impact associated with recent and proposed policies, as required by that agency's statutory mandate.

Schedule RC–K (Quarterly Averages)

Average quarterly asset and liability information is essential to the ability of the FFIEC member entities to more appropriately evaluate the performance of individual institutions. Quarterly average data from Schedule RC–K also provide important information at the industry level for policy review at FFIEC member entities.

The average data reported in Schedule RC–K are used in conjunction with income and expense information from Schedule RI to calculate yields and costs for the corresponding categories of assets and liabilities. These ratios are presented in the Uniform Bank Performance Report (UBPR) where they are used as a tool by examiners, both on- and off-site, to monitor and evaluate trends related to an institution's earnings and capital. These ratios also help the agencies identify trends across the banking industry. Important ratios derived from quarterly average data include, but are not limited to, earnings ratios (*e.g.,* return on average assets, overhead ratio, and net interest margin) and the leverage capital ratio.

The granularity of the data in Schedule RC–K assists in analyzing performance within a bank's asset and liability portfolios. Quarterly average balances allow for better analyses of trends in the composition of an institution's assets and liabilities than is possible from comparisons of quarter-end data, which may be affected by fluctuations related to seasonality or abnormal levels of activity at period-end. The detailed average data used to calculate the yield on specific types of interest-earning assets helps examination teams understand the impact of credit quality on the earnings performance of particular loan portfolios. Where an institution's yields on particular types of loans exceed those of its peers, this warrants examiner scrutiny to determine whether this outcome is a result of the institution's origination or purchase of lower credit quality loans. In addition, the data on the cost of funds by funding type is important in assessing the funding mix at the institution level for oversight purposes. Higher costs for particular types of deposits or other liabilities compared to these costs at an institution's peers also warrants examiner review to determine whether the institution is making greater use of more volatile non-core funding sources. The yield on interest-earning assets and cost of funds also gives insight into the effectiveness of an institution's plans and initiatives related to asset/liability mix, liquidity, and interest rate risk strategies and their resulting impact on earnings. These performance ratios are essential to the consideration of an institution's earnings during pre-examination planning to determine the appropriate scoping of this area, particularly because earnings is evaluated and rated as part of the CAMELS rating system.[22]

Schedule RC–L (Derivatives and Off-Balance-Sheet Items)

Schedule RC–L provides data on off-balance sheet assets and liabilities as well as derivatives contracts. The quarterly reporting of all off-balance sheet items in the Call Report is required by law (12 U.S.C. 1831n(a)(3)(C)). The most recent financial crisis emphasized the importance of identifying and monitoring significant exposures arising from any contingent or off-balance sheet liabilities and the effect of these exposures on an institution's overall risk profile. The granular data on components of off-balance sheet items, as well as derivatives data, assist the banking agencies in ensuring the safety and soundness of financial institutions through both off-site and on-site monitoring of a variety of potential risks. These risks include, but are not limited to, liquidity risk, credit risk, interest rate risk, and foreign exchange risk. The data on Schedule RC–L also is essential for the examination scoping process, which begins during pre-examination planning. The data offer insight into outliers and exceptions, which provide information to examiners on areas on which to focus during their on-site examinations.

The data on Schedule RC–L on the FFIEC 031 and FFIEC 041 are useful in determining

[22] CAMELS is an acronym that represents the ratings from six essential components of an institution's financial condition and operations: Capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk. These components represent the primary areas evaluated by examiners during examinations of institutions.

an institution's potential exposure to losses from derivatives activities. It is also useful in identifying the extent to which an institution may be engaging in hedging strategies that will affect its future earnings prospects. An excessive and/or inappropriate credit derivative position could have a substantial and immediate detrimental impact to an institution's liquidity, interest rate risk, earnings, or capital adequacy. For institutions with material volumes of derivatives as reported on Schedule RC–L, examiners can assess whether the institution's management has the appropriate expertise and policies in place to manage and control the risks associated with its derivatives activities and whether the institution's capital levels are commensurate with its risk exposure. This is particularly true with respect to interest rate derivatives, which are the most widely held derivatives, and are commonly used in the management of interest rate risk. Schedule RC–L provides a granular perspective about the types of interest rate contracts an institution has entered into, which helps an examiner focus on assessing how effectively management uses the various types of interest rate contracts in its derivatives portfolio to hedge its exposure to interest rate risk. Also, examiners investigate fluctuations in the fair values of an institution's holdings of derivatives to determine if there are changes in the institution's risk appetite as set by the board of directors and implemented by management.

The unused commitments information on Schedule RC–L is essential to examiners, especially during periods of financial distress when borrowers rely increasingly on drawing down their lines of credit and unused commitments as a source of funding. The unused commitments data enable examiners to identify whether growth in unused commitments over time is at a manageable level and permit assessments of the potential impact, if such commitments are funded, on the credit quality of the related loan categories, as well as on the liquidity and on the capital position of an institution. Also, institutions may have a concentration in a particular loan category, which may not be readily apparent from balance sheet data until unused commitments to borrowers in this category are actually funded, which dictates that examiners consider the reported amounts on unused commitments by loan category to ensure they identify and assess the concentration risk. Financial and performance standby letters of credit also present liquidity and credit risk considerations for examiners, which also may be greater during periods of financial distress when the counterparties may be more likely to fail to perform as required under the terms of the underlying contract.

The derivatives information on Schedule RC–L is also one of the primary sources that feeds into a derivatives quarterly report that is used to report on bank trading and derivatives activities. This public report issued by the OCC helps the banking agencies' on-site examiners at the largest banks to continuously evaluate the credit, market, operational, reputation, and compliance risks of bank derivatives activities.

Schedule RC–M (Memoranda)

Schedule RC–M collects various types of information. Section 7(k) of the Federal Deposit Insurance Act (12 U.S.C. 1817(k)) authorizes the federal banking agencies to require the reporting and public disclosure of information concerning extensions of credit by an institution to its executive officers and principal shareholders and their related interests. The Board's Regulation O (12 CFR 215), which has been made applicable to all institutions, imposes an aggregate lending limit on extensions of credit to insiders (executive officers, directors, principal shareholders, and their related interests) and, in general, requires an institution to make available the names of its executive officers and principal shareholders to whom the institution had outstanding as of the end of the latest previous quarter aggregate extensions of credit that, when aggregated with all other outstanding extensions of credit to such person and their related interests, equaled or exceeded the lesser of 5 percent of capital and unimpaired surplus or $500,000. The data collected in Schedule RC–M on extensions of credit to the reporting institution's insiders generally align with these requirements and assist the agencies in monitoring compliance with the insider lending regulations between examinations and determining whether supervisory follow-up is warranted when material increases in insider lending are identified.

Because identifiable intangible assets are deducted from regulatory capital or are subject to regulatory capital limits and deducted amounts are not risk weighted, the reporting of these amounts aids in validating an institution's regulatory capital calculations in Schedule RC–R. In addition to their treatment under the regulatory capital rules, mortgage servicing assets in particular are complex in nature and present liquidity risk and interest rate risk and their value is affected by the credit risk of the underlying serviced assets. Mortgage servicing assets also contribute to the level of an institution's mortgage prepayment exposure. When the level of this exposure rises above a specified benchmark at an individual institution, this exposure may warrant additional attention by examiners between examinations and necessitate greater scrutiny of management's prepayment assumptions in its own interest rate risk model during examinations or visitations.

The components of other real estate owned are needed to monitor asset quality trends at individual institutions and industry-wide, including when coupled with the past due and nonaccrual data for loans secured by the same type of property from Schedule RC–N. The component information may provide insight into the market conditions affecting the segments of the real estate market in the institution's trade area, including possible deteriorating conditions.

Maturity and repricing information on other borrowed money, together with the maturity and repricing information collected in other schedules for other types of assets and liabilities, is needed to evaluate liquidity and interest rate risk to the institution, and to aid in evaluating the strategies institutions take to mitigate these risks. Liquidity and interest rate risk indicators that are calculated by agency models from an institution's Call Report data and exceed specified parameters or change significantly between examinations are red flags that call for timely examiner attention. Data on certain secured liabilities also are used in the assessment of institutions' liquidity positions. Increases in the relative volume of secured versus unsecured liabilities may signal that an institution is encountering difficulties in rolling over unsecured borrowings due to deterioration in its condition, which would call for supervisory follow-up when identified between examinations.

Information on mutual funds and annuities, bank websites with transactional capability, certain trustee and custodial activities, and captive insurance subsidiaries, is used to identify institutions engaged in these activities, some of which are not typical activities for community banks. If an institution begins to report that it engages in one or more of these activities or reports a significant increase in assets tied to an activity between examinations, this may indicate the need for examiner follow-up to assess the institution's expertise and management of these activities. An institution's involvement in these activities may also affect the staffing and scoping of examinations, particularly for activities for which compliance with applicable laws and regulations must be evaluated during examinations. The reporting of an institution's internet websites and trade names supports the FDIC's ability to serve as an information resource for insured institutions by responding to inquiries from the public with the most current information concerning the insured status of the institution behind an internet website or a physical branch office that uses a trade name.

For Qualified Thrift Lenders (QTL) subject to 12 U.S.C. 1467a(c), reporting of QTL test information assists the agencies in timely identifying thrift institutions that need to take action to remain in compliance, or that fail to comply and become subject to certain restrictions. International remittance transfers data by type are needed annually to monitor compliance with regulatory requirements (12 CFR 1005.30, *et seq.*). Different types of transfers pose different consumer protection concerns and information of transfer activity aids in the monitoring of the evolution of this market, and how institutions diversify remittance offerings beyond wire transfers.

Schedule RC–R (Regulatory Capital)

Schedule RC–R collects information about an institution's capital. Part I (Regulatory Capital Components and Ratios) collects information about the types and amounts of capital instruments and the leverage and risk-based capital ratios. Part II (Risk-Weighted Assets) collects additional information about types of assets on an institution's balance sheet and certain off-balance sheet items to use in computing the risk-based capital ratios.

Each federal banking agency is required to establish a leverage limit and risk-based capital requirement for insured depository institutions under 12 U.S.C. 1831o and to monitor compliance with those requirements. The agencies implemented the capital requirements in their regulatory capital rules (12 CFR part 3 for OCC; 12 CFR part 217 for the Board; 12 CFR part 324 for the FDIC) and the compliance requirements in their prompt corrective action rules (12 CFR part 6 for OCC; 12 CFR part 208, subpart D for the Board; 12 CFR 324, Subpart H for the FDIC). The capital rules recognize three types of capital instruments: CET–1, Additional Tier 1, and Tier 2 capital. The total of each type on Schedule RC–R, Part I, includes all potential adjustments to each component as allowed under the capital rules. The capital rules also provide for a calculation of risk-weighted assets, which consists of assigning a risk-weight to every asset on an institution's balance sheet that is not deducted from capital, as well as to certain off-balance sheet items. Schedule RC–R, Part II, includes all of the fields necessary to properly calculate an institution's risk-weighted asset amount. Finally, the results of the calculation of capital instrument amounts and risk-weighted assets are used to calculate risk-based and leverage capital ratios on Schedule RC–R, Part I. The agencies need to be able to monitor compliance with the capital rules and prompt corrective action provisions no less frequently than quarterly.

In addition to using the resulting capital ratios to determine an institution's status under 12 U.S.C. 1831o and the banking agencies' prompt corrective action regulations, the FFIEC member entities use the regulatory capital information for other purposes. The calculation of Tier 1 capital at quarter-end flows into the amount of average tangible equity for the calendar quarter that institutions report in Schedule RC–O, which is used in the measurement of institutions' assessment bases for deposit insurance purposes. The Tier 1 leverage ratio is one of the inputs into the calculation of deposit insurance assessment rates for small institutions and Tier 1 capital is a commonly used input when calculating these rates for large and highly complex institutions. Capital adequacy is rated in an institution's on-site examination as the C of the CAMELS component ratings, and the information provided on Schedule RC–R helps examiners evaluate and rate that component. It is also used in the off-site monitoring process, and is important in reviewing the risk profile and viability of a financial institution. For example, the ratio of risk-weighted assets to unweighted assets has been found to provide an informative forward-looking signal regarding an institution's risk posture. The information provided on Schedule RC–R also is used in deciding whether to approve an 18-month examination cycle for a specific institution and in reviewing merger applications.

Information on specific sub-components of regulatory capital is useful as well. For example, the amounts of unrealized gains and losses on securities that flow into regulatory capital provide an indication of an institution's interest rate and market risk. Information on the risk weighting of assets and off-balance sheet items provides insight into management's risk tolerance and the institution's risk to the deposit insurance fund. The risk-weighted asset composition information and risk-based capital ratios that flow into the UBPR are helpful to examiners when reviewing Reports of Examination and to establish a peer group average for comparison when evaluating changes in these items. The risk-weighted asset composition information also assists examiners in evaluating the reasons for changes in total risk-weighted assets over time at individual institutions. The derivatives exposure items reported in the Memoranda section of Schedule RC–R, Part II, provide a key insight into the notional principal amounts of both cleared and over-the-counter derivatives in the banking system, in addition to being inputs into the calculation for risk-weighted assets.

Appendix B—FFIEC 051: To be completed by banks with domestic offices only and total assets less than $1 billion

Data Items Removed, Other Impacts to Data Items, Data Items With a Reduction in Frequency of Collection, or Data Items with an Increase in Reporting Threshold

DATA ITEMS REMOVED

Schedule	Item	Item name	MDRM No.
RI	5.d.(1)	Fees and commissions from securities brokerage	RIADC886.
RI	5.d.(2)	Investment banking, advisory, and underwriting fees and commissions. Note: Items 5.d.(1) and 5.d.(2) of Schedule RI will be combined into one data item.	RIADC888.
RI	5.d.(3)	Fees and commissions from annuity sales	RIADC887.
RI	5.d.(4)	Underwriting income from insurance and reinsurance activities.	RIADC386.
RI	5.d.(5)	Income from other insurance activities Note: Items 5.d.(3), 5.d.(4), and 5.d.(5) of Schedule RI will be combined into one data item.	RIADC387.
RI	5.g	Net securitization income	RIADB493.
RI	M1	Interest expense incurred to carry tax-exempt securities, loans, and leases acquired after August 7, 1986, that is not deductible for federal income tax purposes.	RIAD4513.
RI–B, Part II	M4	Amount of allowance for post-acquisition credit losses on purchased credit-impaired loans accounted for in accordance with FASB ASC 310–30 (former AICPA Statement of Position 03–3).	RIADC781.
RI–E	1.f	Net change in the fair values of financial instruments accounted for under a fair value option.	RIADF229.
RI–E	1.h	Gains on bargain purchases	RIADJ447.
RC	10.a	Goodwill Note: Schedule RC, item 10.a will be moved to Schedule RC–M, new item 2.b.	RCON3163.
RC	10.b	Other intangible assets (from Schedule RC–M). Note: Items 10.a and 10.b of Schedule RC will be combined into one data item.	RCON0426.
RC–B	2.a	U.S. Government agency obligations (exclude mortgage-backed securities): Issued by U.S. Government agencies (Columns A through D).	RCON1289, RCON1290, RCON1291, RCON1293.
RC–B	2.b	U.S. Government agency obligations (exclude mortgage-backed securities): Issued by U.S. Government-sponsored agencies (Columns A through D). Note: Items 2.a and 2.b of Schedule RC–B will be combined into one data item (Columns A through D).	RCON1294, RCON1295, RCON1297, RCON1298.

DATA ITEMS REMOVED—Continued

Schedule	Item	Item name	MDRM No.
RC–B	5.b.(1)	Structured financial products: Cash (Columns A through D).	RCONG336, RCONG337, RCONG338, RCONG339.
RC–B	5.b.(2)	Structured financial products: Synthetic (Columns A through D).	RCONG340, RCONG341, RCONG342, RCONG343.
RC–B	5.b.(3)	Structured financial products: Hybrid (Columns A through D).	RCONG344, RCONG345, RCONG346, RCONG347.
		Note: Items 5.b.(1), 5.b.(2), and 5.b.(3) of Schedule RC–B will be combined into one line item (Columns A through D).	
RC–B	M6.a	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by financial institutions (Columns A through D).	RCONG348, RCONG349, RCONG350, RCONG351.
RC–B	M6.b	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by real estate investment trusts (Columns A through D).	RCONG352, RCONG353, RCONG354, RCONG355.
RC–B	M6.c	Structured financial products by underlying collateral or reference assets: Corporate and similar loans (Columns A through D).	RCONG356, RCONG357, RCONG358, RCONG359.
RC–B	M6.d	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS issued or guaranteed by U.S. Government-sponsored enterprises (GSEs) (Columns A through D).	RCONG360, RCONG361, RCONG362, RCONG363.
RC–B	M6.e	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS not issued or guaranteed by GSEs (Columns A through D).	RCONG364, RCONG365, RCONG366, RCONG367.
RC–B	M6.f	Structured financial products by underlying collateral or reference assets: Diversified (mixed) pools of structured financial products (Columns A through D).	RCONG368, RCONG369, RCONG370, RCONG371.
RC–B	M6.g	Structured financial products by underlying collateral or reference assets: Other collateral or reference assets (Columns A through D).	RCONG372, RCONG373, RCONG374, RCONG375.
RC–K	7	Trading assets	RCON3401.
RC–L	1.b.(1)	Unused consumer credit card lines	RCONJ455.
RC–L	1.b.(2)	Other unused credit card lines	RCONJ456.
RC–L	1.d	Unused commitments: Securities underwriting	RCON3817.
RC–M	2.b	Purchased credit card relationships and nonmortgage servicing assets.	RCONB026.
		Note: Amounts reported in item 2.b will be included in item 2.c, All other identifiable intangible assets.	
RC–M	3.f	Foreclosed properties from "GNMA loans"	RCONC979.
		Note: Amounts reported in item 3.f will be included in item 3.c, Other real estate owned: 1–4 family residential properties.	

OTHER IMPACTS TO DATA ITEMS

Schedule	Item	Item name	MDRM No.
RI	5.d.(1) (New)	Fees and commissions from securities brokerage, investment banking, advisory, and underwriting activities. Note: Items 5.d.(1) and 5.d.(2) of Schedule RI removed above will be combined into this data item.	To be determined (TBD).
RI	5.d.(2) (New)	Income from insurance activities (includes underwriting income from insurance and reinsurance activities). Note: Items 5.d.(3), 5.d.(4), and 5.d.(5) of Schedule RI removed above will be combined into this data item.	TBD.
RC	10 (New)	Intangible assets (from Schedule RC–M) Note: Items 10.a and 10.b of Schedule RC removed above will be combined into this data item.	RCON2143.
RC–B	2 (New)	U.S. Government agency and sponsored agency obligations (exclude mortgage-backed securities (Columns A through D). Note: Items 2.a and 2.b of Schedule RC–B removed above will be combined into this data item (Columns A through D).	TBD (4 MDRMs).
RC–B	5.b (New)	Structured financial products (Columns A through D) Note: Items 5.b.(1), 5.b.(2), and 5.b.(3) of Schedule RC–B removed above will be combined into this line item (Columns A through D).	TBD (4 MDRMs).
RC–M	2.b (Re-mapping)	Goodwill	RCON3163.

OTHER IMPACTS TO DATA ITEMS—Continued

Schedule	Item	Item name	MDRM No.
		Note: Schedule RC, item 10.a will be moved to Schedule RC–M, new item 2.b., and the phrase ''other than goodwill'' will be removed from the caption for Schedule RC–M, item 2.	

Data Items With a Reduction in Frequency of Collection

SEMIANNUAL REPORTING

[June 30 and December 31]

Schedule	Item	Item name	MDRM No.
RC–B	M3	Amortized cost of held-to-maturity securities sold or transferred to available-for-sale or trading securities during the calendar year-to-date.	RCON1778.
RC–C, Part I	M7.a	Purchased credit-impaired loans held for investment accounted for in accordance with FASB ASC 310–30: Outstanding balance.	RCONC779.
RC–C, Part I	M7.b	Purchased credit-impaired loans held for investment accounted for in accordance with FASB ASC 310–30: Amount included in Schedule RC–C, Part I, items 1 through 9.	RCONC780.
RC–C, Part I	M8.a	Total amount of closed-end loans with negative amortization features secured by 1–4 family residential properties.	RCONF230.
RC–C, Part I	M12	Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year (Columns A through C).	RCONGW45, RCONGW46, RCONGW47.
RC–L	11.a	Year-to-date merchant credit card sales volume: Sales for which the reporting bank is the acquiring bank.	RCONC223.
RC–L	11.b	Year-to-date merchant credit card sales volume: Sales for which the reporting bank is the agent bank with risk.	RCONC224.
RC–N	M7	Additions to nonaccrual assets during the quarter Note: This caption would be revised to ''Additions to nonaccrual assets during the last 6 months.''	RCONC410.
RC–N	M8	Nonaccrual assets sold during the quarter Note: This caption would be revised to ''Nonaccrual assets sold during the last 6 months.''	RCONC411.
RC–N	M9.a	Purchased credit-impaired loans accounted for in accordance with FASB ASC 310–30 (former AICPA Statement of Position 03–3): Outstanding balance (Columns A through C).	RCONL183, RCONL184, RCONL185.
RC–N	M9.b	Purchased credit-impaired loans accounted for in accordance with FASB ASC 310–30 (former AICPA Statement of Position 03–3): Amount included in Schedule RC–N, items 1 through 7, above (Columns A through C).	RCONL186, RCONL187, RCONL188.

ANNUAL REPORTING

[December 31]

Schedule	Item	Item name	MDRM No.
RI–E	1.a through 1.l	Other noninterest income (from Schedule RI, item 5.l)	RIADC013, RIADC014, RIADC016, RIAD4042, RIADC015, RIADF555, RIADT047, RIAD4461, RIAD4462, RIAD4463.
RI–E	2.a through 2.p	Other noninterest expense (from Schedule RI, item 7.d)	RIADC017, RIAD0497, RIAD4136, RIADC018, RIAD8403, RIAD4141, RIAD4146, RIADF556, RIADF557, RIADF558, RIADF559, RIADY923, RIADY924, RIAD4464, RIAD4467, RIAD4468.

DATA ITEMS WITH AN INCREASE IN REPORTING THRESHOLD

[To be completed by banks with components of other noninterest income in amounts greater than $100,000 that exceed 7 percent of Schedule RI, item 5.l]

Schedule	Item	Item name	MDRM No.
RI–E	1.a through 1.l	Other noninterest income (from Schedule RI, item 5.l)	RIADC013, RIADC014, RIADC016, RIAD4042, RIADC015, RIADF555, RIADT047, RIAD4461, RIAD4462, RIAD4463.

[To be completed by banks with components of other noninterest expense in amounts greater than $100,000 that exceed 7 percent of Schedule RI, item 7.d]

Schedule	Item	Item name	MDRM No.
RI–E	2.a through 2.p	Other noninterest expense (from Schedule RI, item 7.d)	RIADC017, RIAD0497, RIAD4136, RIADC018, RIAD8403, RIAD4141, RIAD4146, RIADF556, RIADF557, RIADF558, RIADF559, RIADY923, RIADY924, RIAD4464, RIAD4467, RIAD4468.

Appendix C—FFIEC 041: To Be Completed by Banks With Domestic Offices Only and Consolidated Total Assets Less Than $100 Billion

Data Items Removed, Other Impacts to Data Items, Data Items With a Reduction in Frequency of Collection, or Data Items With an Increase in Reporting Threshold

DATA ITEMS REMOVED

Schedule	Item	Item name	MDRM No.
RI	M8.a	Trading revenue from interest rate exposures	RIAD8757.
RI	M8.b	Trading revenue from foreign exchange exposures	RIAD8758.
RI	M8.c	Trading revenue from equity security and index exposures	RIAD8759.
RI	M8.d	Trading revenue from commodity and other exposures	RIAD8760.
RI	M8.e	Trading revenue from credit exposures	RIADF186.
RI	M8.f.(1)	Impact on trading revenue of changes in the creditworthiness of the bank's derivatives counterparties on the bank's derivative assets: Gross credit valuation adjustment (CVA).	RIADFT36.
RI	M8.f.(2)	Impact on trading revenue of changes in the creditworthiness of the bank's derivatives counterparties on the bank's derivative assets: CVA hedge.	RIADFT37.
RI	M8.g.(1)	Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities: Gross debit valuation adjustment (DVA).	RIADFT38.
RI	M8.g.(2)	Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities: DVA hedge.	RIADFT39.
RI	M8.h	Gross trading revenue before including positive or negative net CVA and net DVA.	RIADFT40.
RI–E	1.f	Net change in the fair values of financial instruments accounted for under a fair value option.	RIADF229.
RI–E	1.h	Gains on bargain purchases	RIADJ447.
RC	10.a	Goodwill Note: Schedule RC, item 10.a will be moved to Schedule RC–M, new item 2.b.	RCON3163.
RC	10.b	Other intangible assets (from Schedule RC–M) Note: Items 10.a and 10.b of Schedule RC will be combined into one data item.	RCON0426.

DATA ITEMS REMOVED—Continued

Schedule	Item	Item name	MDRM No.
RC–B	2.a	U.S. Government agency obligations (exclude mortgage-backed securities): Issued by U.S. Government agencies (Columns A through D).	RCON1289, RCON1290, RCON1291, RCON1293.
RC–B	2.b	U.S. Government agency obligations (exclude mortgage-backed securities): Issued by U.S. Government-sponsored agencies (Columns A through D). Note: Items 2.a and 2.b of Schedule RC–B will be combined into one data item (Columns A through D).	RCON1294, RCON1295, RCON1297, RCON1298.
RC–B	5.b.(1)	Structured financial products: Cash (Columns A through D).	RCONG336, RCONG337, RCONG338, RCONG339.
RC–B	5.b.(2)	Structured financial products: Synthetic (Columns A through D).	RCONG340, RCONG341, RCONG342, RCONG343.
RC–B	5.b.(3)	Structured financial products: Hybrid (Columns A through D).	RCONG344, RCONG345, RCONG346, RCONG347.
		Note: Items 5.b.(1), 5.b.(2), and 5.b.(3) of Schedule RC–B will be combined into one data item.	
RC–D	5.a.(1)	Structured financial products: Cash	RCONG383.
RC–D	5.a.(2)	Structured financial products: Synthetic	RCONG384.
RC–D	5.a.(3)	Structured financial products: Hybrid Note: Items 5.a.(1), 5.a.(2), and 5.a.(3) of Schedule RC–D will be combined into one data item.	RCONG385.
RC–D	6.a.(1)	Construction, land development, and other land loans	RCONF604.
RC–D	6.a.(2)	Loans secured by farmland	RCONF605.
RC–D	6.a.(3)(a)	Revolving, open-end loans secured by 1–4 family residential properties and extended under lines of credit.	RCONF606.
RC–D	6.a.(3)(b)(1)	Closed-end loans secured by 1–4 family residential properties: Secured by first liens.	RCONF607.
RC–D	6.a.(3)(b)(2)	Closed-end loans secured by 1–4 family residential properties: Secured by junior liens.	RCONF611.
RC–D	6.a.(4)	Loans secured by multifamily (5 or more) residential properties.	RCONF612.
RC–D	6.a.(5)	Loans secured by nonfarm nonresidential properties Note: Items 6.a.(1), 6.a.(2), 6.a.(3)(a), 6.a.(3)(b)(1), 6.a.(3)(b)(2), 6.a.(4), and 6.a.(5) of Schedule RC–D will be replaced by two data items: (1) Loans secured by 1–4 family residential properties, and (2) All other loans secured by real estate.	RCONF613.
RC–D	6.c.(1)	Loans to individuals for household, family, and other personal expenditures: Credit cards.	RCONF615.
RC–D	6.c.(2)	Loans to individuals for household, family, and other personal expenditures: Other revolving credit plans.	RCONF616.
RC–D	6.c.(3)	Loans to individuals for household, family, and other personal expenditures: Automobile loans.	RCONK199.
RC–D	6.c.(4)	Loans to individuals for household, family, and other personal expenditures: Other consumer loans. Note: Items 6.c.(1), 6.c.(2), 6.c.(3), and 6.c.(4) of Schedule RC–D will be combined into one data item.	RCONK210.
RC–D	M1.a.(1)	Unpaid principal balance of loans measured at fair value: Construction, land development, and other land loans.	RCONF625.
RC–D	M1.a.(2)	Unpaid principal balance of loans measured at fair value: Loans secured by farmland.	RCONF626.
RC–D	M1.a.(3)(a)	Unpaid principal balance of loans measured at fair value: Revolving, open-end loans secured by 1–4 family residential properties and extended under lines of credit.	RCONF627.
RC–D	M1.a.(3)(b)(1)	Unpaid principal balance of loans measured at fair value: Closed-end loans secured by 1–4 family residential properties: Secured by first liens.	RCONF628.
RC–D	M1.a.(3)(b)(2)	Unpaid principal balance of loans measured at fair value: Closed-end loans secured by 1–4 family residential properties: Secured by junior liens.	RCONF629.
RC–D	M1.a.(4)	Unpaid principal balance of loans measured at fair value: Loans secured by multifamily (5 or more) residential properties.	RCONF630.
RC–D	M1.a.(5)	Unpaid principal balance of loans measured at fair value: Loans secured by nonfarm nonresidential properties. Note: Items M1.a.(1), M1.a.(2), M1.a.(3)(a), M1.a.(3)(b)(1), M1.a.(3)(b)(2), M1.a.(4), and M1.a.(5) of Schedule RC–D will be replaced by two data items: (1) Unpaid principal balance of loans measured at fair value: Loans secured by 1–4 family residential properties, and (2) Unpaid principal balance of loans measured at fair value: All other loans secured by real estate.	RCONF631.

DATA ITEMS REMOVED—Continued

Schedule	Item	Item name	MDRM No.
RC–D	M1.c.(1)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures: Credit cards.	RCONF633.
RC–D	M1.c.(2)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures: Other revolving credit plans.	RCONF634.
RC–D	M1.c.(3)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures: Automobile loans.	RCONK200.
RC–D	M1.c.(4)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures: Other consumer loans.	RCONK211.
		Note: Items M1.c.(1), M1.c.(2), M1.c.(3), and M1.c.(4) of Schedule RC–D will be combined into one data item.	
RC–D	M2.a	Loans measured at fair value that are past due 90 days or more: Fair value.	RCONF639.
RC–D	M2.b	Loans measured at fair value that are past due 90 days or more: Unpaid principal balance.	RCONF640.
RC–D	M3.a	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by financial institutions.	RCONG299.
RC–D	M3.b	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by real estate investment trusts.	RCONG332.
RC–D	M3.c	Structured financial products by underlying collateral or reference assets: Corporate and similar loans.	RCONG333.
RC–D	M3.d	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS issued or guaranteed by U.S. Government-sponsored enterprises (GSEs).	RCONG334.
RC–D	M3.e	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS not issued or guaranteed by GSEs.	RCONG335.
RC–D	M3.f	Structured financial products by underlying collateral or reference assets: Diversified (mixed) pools of structured financial products.	RCONG651.
RC–D	M3.g	Structured financial products by underlying collateral or reference assets: Other collateral or reference assets.	RCONG652.
RC–D	M4.a	Pledged trading assets: Pledged securities	RCONG387.
RC–D	M4.b	Pledged trading assets: Pledged loans	RCONG388.
RC–D	M5.a	Asset-backed securities: Credit card receivables	RCONF643.
RC–D	M5.b	Asset-backed securities: Home equity lines	RCONF644.
RC–D	M5.c	Asset-backed securities: Automobile loans	RCONF645.
RC–D	M5.d	Asset-backed securities: Other consumer loans	RCONF646.
RC–D	M5.e	Asset-backed securities: Commercial and industrial loans	RCONF647.
RC–D	M5.f	Asset-backed securities: Other	RCONF648.
RC–D	M6	Retained beneficial interests in securitizations	RCONF651.
RC–D	M7.a	Equity securities: Readily determinable fair values	RCONF652.
RC–D	M7.b	Equity securities: Other	RCONF653.
RC–D	M8	Loans pending securitization	RCONF654.
RC–D	M9	Other trading assets	RCONF655, RCONF656, RCONF657.
RC–D	M10	Other trading liabilities	RCONF658, RCONF659, RCONF660.
RC–L	1.a.(1)	Unused commitments for Home Equity Conversion Mortgage (HECM) reverse mortgages outstanding that are held for investment.	RCONJ477.
RC–L	1.a.(2)	Unused commitments for proprietary reverse mortgages outstanding that are held for investment.	RCONJ478.
		Note: Items 1.a.(1) and 1.a.(2) of Schedule RC–L will be combined into one data item.	
RC–L	8	Spot foreign exchange contracts	RCON8765.
RC–L	16.a	Over-the-counter derivatives: Net current credit exposure (Columns B, C, and D).	RCONG419, RCONG420, RCONG421.
RC–L	16.b.(1)	Over-the-counter derivatives: Fair value of collateral: Cash—U.S. dollar (Columns B, C, and D).	RCONG424, RCONG425, RCONG426.
RC–L	16.b.(2)	Over-the-counter derivatives: Fair value of collateral: Cash—Other currencies (Columns B, C, and D).	RCONG429, RCONG430, RCONG431.
RC–L	16.b.(3)	Over-the-counter derivatives: Fair value of collateral: U.S. Treasury securities (Columns B, C, and D).	RCONG434, RCONG435, RCONG436.

DATA ITEMS REMOVED—Continued

Schedule	Item	Item name	MDRM No.
RC–L	16.b.(4)	Over-the-counter derivatives: Fair value of collateral: U.S. Government agency and U.S. Government-sponsored agency debt securities (Columns A, B, C, D, and E).	RCONG438, RCONG439, RCONG440, RCONG441, RCONG442
RC–L	16.b.(5)	Over-the-counter derivatives: Fair value of collateral: Corporate bonds (Columns A, B, C, D, and E).	RCONG443, RCONG444, RCONG445, RCONG446, RCONG447.
RC–L	16.b.(6)	Over-the-counter derivatives: Fair value of collateral: Equity securities (Columns A, B, C, D, and E).	RCONG448, RCONG449, RCONG450, RCONG451, RCONG452.
RC–L	16.b.(7)	Over-the-counter derivatives: Fair value of collateral: All other collateral (Columns B, C, and D). Note: Amounts reported in items 16.b.(4), 16.b.(5), and 16.b.(6), Columns A and E, will be included in item 16.b.(7), Columns A and E.	RCONG454, RCONG455 RCONG456.
RC–L	16.b.(8)	Over-the-counter derivatives: Fair value of collateral: Total fair value of collateral (Columns B, C, and D). Note: Amounts reported in items 16.a, 16.b.(1), 16.b.(2), 16.b.(3), 16.b.(4), 16.b.(5), 16.b.(6), and 16.b.(7), Columns B, C, and D, will be included in items 16.a, 16.b.(1), 16.b.(2), 16.b.(3), and 16.b.(7), Column E.	RCONG459, RCONG460 RCONG461.
RC–M	2.b	Purchased credit card relationships and nonmortgage servicing assets. Note: Amounts reported in item 2.b will be included in item 2.c, All other identifiable intangible assets.	RCONB026.
RC–M	3.f	Foreclosed properties from ”GNMA loans” Note: Amounts reported in item 3.f will be included in item 3.c, Other real estate owned: 1–4 family residential properties.	RCONC979.

OTHER IMPACTS TO DATA ITEMS

Schedule	Item	Item name	MDRM No.
RC	10 (New)	Intangible assets Note: Items 10.a and 10.b of Schedule RC will be combined into this data item.	RCON2143.
RC–B	2 (New)	U.S. Government agency and sponsored agency obligations (exclude mortgage-backed securities (Columns A through D). Note: Items 2.a and 2.b of Schedule RC–B removed above will be combined into this data item (Columns A through D).	TBD (4 MDRMs).
RC–B	5.b (New)	Structured financial products (Columns A through D) Note: Items 5.b.(1), 5.b.(2), and 5.b.(3) of Schedule RC–B removed above will be combined into this data item (Columns A through D).	TBD (4 MDRMs).
RC–D	5.a (New)	Structured financial products Note: Items 5.a.(1), 5.a.(2), and 5.a.(3) of Schedule RC–D removed above will be combined into this data item.	TBD.
RC–D	6.a.(1) (New)	Loans secured by 1–4 family residential properties Note: Items 6.a.(3)(a), 6.a.(3)(b)(1), and 6.a.(3)(b)(2) of Schedule RC–D removed above will be combined into this data item.	TBD.
RC–D	6.a.(2) (New)	All other loans secured by real estate Note: Items 6.a.(1), 6.a.(2), 6.a.(4), and 6.a.(5) of Schedule RC–D removed above will be combined into this data item.	TBD.
RC–D	6.c (New)	Loans to individuals for household, family and other personal expenditures (i.e., consumer loans) (includes purchased paper). Note: Items 6.c.(1), 6.c.(2), 6.c.(3), and 6.c.(4) of Schedule RC–D removed above will be combined into this data item.	TBD.
RC–D	M1.a.(1) (New)	Unpaid principal balance of loans measured at fair value: Loans secured by 1–4 family residential properties. Note: Items M1.a.(3)(a), M1.a.(3)(b)(1), and M1.a.(3)(b)(2) of Schedule RC–D removed above will be combined into this data item.	TBD.
RC–D	M1.a.(2) (New)	Unpaid principal balance of loans measured at fair value: All other loans secured by real estate. Note: Items M1.a.(1), M1.a.(2), M1.a.(4), and M1.a.(5) of Schedule RC–D removed above will be combined into this data item.	TBD.

OTHER IMPACTS TO DATA ITEMS—Continued

Schedule	Item	Item name	MDRM No.
RC–D	M1.c (New)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures. Note: Items M1.c.(1), M1.c.(2), M1.c.(3), and M1.c.(4) of Schedule RC–D removed above will be combined into this data item.	TBD.
RC–L	1.a.(1) (New)	Unused commitments for reverse mortgages outstanding that are held for investment. Note: Items 1.a.(1) and 1.a.(2) of Schedule RC–L removed above will be combined into this data item.	TBD.
RC–M	2.b (Re-mapping)	Goodwill. Note: Schedule RC, item 10.a will be moved to Schedule RC–M, new item 2.b., and the phrase ''other than goodwill'' will be removed from the caption for Schedule RC–M, item 2.	RCON3163.

Data Items With a Reduction in Frequency of Collection

SEMIANNUAL REPORTING

[June 30 and December 31]

Schedule	Item	Item name	MDRM No.
RI	M12	Noncash income from negative amortization on closed-end loans secured by 1–4 family residential properties.	RIADF228.
RC–B	M3	Amortized cost of held-to-maturity securities sold or transferred to available-for-sale or trading securities during the calendar year-to-date.	RCON1778.
RC–C, Part I	M7.a	Purchased credit-impaired loans held for investment accounted for in accordance with FASB ASC 310–30: Outstanding balance.	RCONC779.
RC–C, Part I	M7.b	Purchased credit-impaired loans held for investment accounted for in accordance with FASB ASC 310–30: Amount included in Schedule RC–C, Part I, items 1 through 9.	RCONC780.
RC–C, Part I	M8.a	Total amount of closed-end loans with negative amortization features secured by 1–4 family residential properties.	RCONF230.
RC–C, Part I	M8.b	Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1–4 family residential properties.	RCONF231.
RC–C, Part I	M8.c	Total amount of negative amortization on closed-end loans secured by 1–4 family residential properties included in the amount reported in Memorandum item 8.a above.	RCONF232.
RC–C, Part I	M12.a	Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year: Loans secured by real estate (Columns A through C).	RCONG091, RCONG092, RCONG093.
RC–C, Part I	M12.b	Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year: Commercial and industrial loans (Columns A through C).	RCONG094, RCONG095, RCONG096.
RC–C, Part I	M12.c	Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year: Loans to individuals for household, family, and other personal expenditures (Columns A through C).	RCONG097, RCONG098, RCONG099.
RC–C, Part I	M12.d	Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year: All other loans and all leases (Columns A through C).	RCONG100, RCONG101, RCONG102.
RC–L	1.b.(1)	Unused consumer credit card lines	RCONJ455.
RC–L	1.b.(2)	Other unused credit card lines	RCONJ456.

SEMIANNUAL REPORTING—Continued

[June 30 and December 31]

Schedule	Item	Item name	MDRM No.
RC–L	11.a	Year-to-date merchant credit card sales volume: Sales for which the reporting bank is the acquiring bank.	RCONC223.
RC–L	11.b	Year-to-date merchant credit card sales volume: Sales for which the reporting bank is the agent bank with risk.	RCONC224.
RC–N	M7	Additions to nonaccrual assets during the quarter Note: This caption would be revised to "Additions to nonaccrual assets during the last 6 months".	RCONC410.
RC–N	M8	Nonaccrual assets sold during the quarter Note: This caption would be revised to "Nonaccrual assets sold during the last 6 months".	RCONC411.
RC–N	M9.a	Purchased credit-impaired loans accounted for in accordance with FASB ASC 310–30 (former AICPA Statement of Position 03–3): Outstanding balance (Columns A through C).	RCONL183, RCONL184, RCONL185.
RC–N	M9.b	Purchased credit-impaired loans accounted for in accordance with FASB ASC 310–30 (former AICPA Statement of Position 03–3): Amount included in Schedule RC–N, items 1 through 7, above (Columns A through C).	RCONL186, RCONL187, RCONL188.

ANNUAL REPORTING

[December]

Schedule	Item	Item name	MDRM No.
RC–M	9	Do any of the bank's internet websites have transactional capability, i.e., allow the bank's customers to execute transactions on their accounts through the website?	RCON4088.
RC–M	14.a	Total assets of captive insurance subsidiaries	RCONK193.
RC–M	14.b	Total assets of captive reinsurance subsidiaries	RCONK194.

Data Items With an Increase in Reporting Threshold

Schedule RC–D is to be completed by banks that reported total trading assets of *$10 million* or more in any of the four preceding calendar quarters and all banks meeting the FDIC's definition of a large or highly complex institution for deposit insurance assessment purposes.

TO BE COMPLETED BY BANKS WITH $10 BILLION OR MORE IN TOTAL ASSETS

Schedule	Item	Item name	MDRM No.
RC–B	M5.a	Asset-backed securities: Credit card receivables (Columns A, B, C, and D).	RCONB838, RCONB839, RCONB840, RCONB841.
RC–B	M5.b	Asset-backed securities: Home equity lines (Columns A, B, C, and D).	RCONB842, RCONB843, RCONB844, RCONB845.
RC–B	M5.c	Asset-backed securities: Automobile loans (Columns A, B, C, and D).	RCONB846, RCONB847, RCONB848, RCONB849.
RC–B	M5.d	Asset-backed securities: Other consumer loans (Columns A, B, C, and D).	RCONB850, RCONB851, RCONB852, RCONB853.
RC–B	M5.e	Asset-backed securities: Commercial and industrial loans (Columns A, B, C, and D).	RCONB854, RCONB855, RCONB856, RCONB857.
RC–B	M5.f	Asset-backed securities: Other (Columns A, B, C, and D)	RCONB858, RCONB859, RCONB860, RCONB861.
RC–B	M6.a	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by financial institutions (Columns A through D).	RCONG348, RCONG349, RCONG350, RCONG351.
RC–B	M6.b	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by real estate investment trusts (Columns A through D).	RCONG352, RCONG353, RCONG354, RCONG355.
RC–B	M6.c	Structured financial products by underlying collateral or reference assets: Corporate and similar loans (Columns A through D).	RCONG356, RCONG357, RCONG358, RCONG359.
RC–B	M6.d	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS issued or guaranteed by U.S. Government-sponsored enterprises (GSEs) (Columns A through D).	RCONG360, RCONG361, RCONG362, RCONG363.
RC–B	M6.e	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS not issued or guaranteed by GSEs (Columns A through D).	RCONG364, RCONG365, RCONG366, RCONG367.

TO BE COMPLETED BY BANKS WITH $10 BILLION OR MORE IN TOTAL ASSETS—Continued

Schedule	Item	Item name	MDRM No.
RC–B	M6.f	Structured financial products by underlying collateral or reference assets: Diversified (mixed) pools of structured financial products (Columns A through D).	RCONG368, RCONG369, RCONG370, RCONG371.
RC–B	M6.g	Structured financial products by underlying collateral or reference assets: Other collateral or reference assets (Columns A through D).	RCONG372, RCONG373, RCONG374, RCONG375.

TO BE COMPLETED BY BANKS WITH COMPONENTS OF OTHER NONINTEREST INCOME IN AMOUNTS GREATER THAN $100,000 THAT EXCEED 7 PERCENT OF SCHEDULE RI, ITEM 5.L

Schedule	Item	Item name	MDRM No.
RI–E	1.a through 1.l	Other noninterest income (from Schedule RI, item 5.l)	RIADC013, RIADC014, RIADC016, RIAD4042, RIADC015, RIADF555, RIADT047, RIAD4461, RIAD4462, RIAD4463.

TO BE COMPLETED BY BANKS WITH COMPONENTS OF OTHER NONINTEREST EXPENSE IN AMOUNTS GREATER THAN $100,000 THAT EXCEED 7 PERCENT OF SCHEDULE RI, ITEM 7.D

Schedule	Item	Item name	MDRM No.
RI–E	2.a through 2.p	Other noninterest expense (from Schedule RI, item 7.d)	RIADC017, RIAD0497, RIAD4136, RIADC018, RIAD8403, RIAD4141, RIAD4146, RIADF556, RIADF557, RIADF558, RIADF559, RIADY923, RIADY924, RIAD4464, RIAD4467, RIAD4468.

TO BE COMPLETED BY BANKS WITH TOTAL TRADING ASSETS OF $10 MILLION OR MORE IN ANY OF THE FOUR PRECEDING CALENDAR QUARTERS AND ALL BANKS MEETING THE FDIC'S DEFINITION OF A LARGE OR HIGHLY COMPLEX INSTITUTION FOR DEPOSIT INSURANCE ASSESSMENT PURPOSES

Schedule	Item	Item name	MDRM No.
RC–K	7	Trading assets	RCON3401.

Appendix D—FFIEC 031: To Be Completed by Banks With Domestic and Foreign Offices and Banks With Domestic Offices Only and Consolidated Total Assets of $100 Billion or More

Data Items Removed, Other Impacts to Data Items, Data Items With a Reduction in Frequency of Collection, or Data Items with an Increase in Reporting Threshold

DATA ITEMS REMOVED

Schedule	Item	Item name	MDRM No.
RI–E	1.f	Net change in the fair values of financial instruments accounted for under a fair value option.	RIADF229.
RI–E	1.h	Gains on bargain purchases	RIADJ447.
RC	10.a	Goodwill Note: Schedule RC, item 10.a will be moved to Schedule RC–M, new item 2.b.	RCFD3163.
RC	10.b	Other intangible assets Note: Items 10.a and 10.b of Schedule RC will be combined into one data item.	RCFD0426.

DATA ITEMS REMOVED—Continued

Schedule	Item	Item name	MDRM No.
RC–B	2.a	U.S. Government agency obligations (exclude mortgage-backed securities): Issued by U.S. Government agencies (Columns A through D).	RCFD1289, RCFD1290, RCFD1291, RCFD1293.
RC–B	2.b	U.S. Government agency obligations (exclude mortgage-backed securities): Issued by U.S. Government-sponsored agencies (Columns A through D).	RCFD1294, RCFD1295, RCFD1297, RCFD1298.
		Note: Items 2.a and 2.b of Schedule RC–B will be combined into one data item.	
RC–B	5.b.(1)	Structured financial products: Cash (Columns A through D).	RCFDG336, RCFDG337, RCFDG338, RCFDG339.
RC–B	5.b.(2)	Structured financial products: Synthetic (Columns A through D).	RCFDG340, RCFDG341, RCFDG342, RCFDG343.
RC–B	5.b.(3)	Structured financial products: Hybrid (Columns A through D).	RCFDG344, RCFDG345, RCFDG346, RCFDG347.
		Note: Items 5.b.(1), 5.b.(2), and 5.b.(3) of Schedule RC–B will be combined into one data item.	
RC–D	All data items reported in Column B, "Domestic offices".	Column B, "Domestic offices" Note: Data items 6.a.(1) through 6.a.(5), Column B, will be combined into two data items to be collected for the consolidated bank in Column A, which will replace data item 6.a, Column A. In addition, data items M1.a.(1) through M1.a.(5), Column B, will be combined into two data items to be collected for the consolidated bank in Column A, which will replace data item M.1.a, Column A. Data items 12 and 15, Column B, will be moved to Schedule RC–H, new items 19 and 20. Data items 6.a.(1) through 6.d, Column B, will be combined into one data item and moved to Schedule RC–H, new item 21.	RCON3531, RCON3532, RCON3533, RCONG379, RCONG380, RCONG381, RCONK197, RCONK198, RCONG383, RCONG384, RCONG385, RCONG386, RCONF604, RCONF605, RCONF606, RCONF607, RCONF611, RCONF612, RCONF613, RCONF614, RCONF615, RCONF616, RCONK199, RCONK210, RCONF618, RCON3541, RCON3543, RCON3545, RCON3546, RCONF624, RCON3547, RCON3548, RCONF625, RCONF626, RCONF627, RCONF628, RCONF629, RCONF630, RCONF631, RCONF632, RCONF633, RCONF634, RCONK200, RCONK211, RCONF636, RCONF639, RCONF640, RCONG299, RCONG332, RCONG333, RCONG334, RCONG335, RCONG651, RCONG652, RCONG387, RCONG388.
RC–D	5.a.(1)	Structured financial products: Cash (Column A)	RCFDG383.
RC–D	5.a.(2)	Structured financial products: Synthetic (Column A)	RCFDG384.
RC–D	5.a.(3)	Structured financial products: Hybrid (Column A)	RCFDG385.
		Note: Items 5.a.(1), 5.a.(2), and 5.a.(3) of Schedule RC–D, Column A, will be combined into one data item.	
RC–D	6.a	Loans secured by real estate (Column A)	RCFDF610.
RC–D	6.c.(1)	Loans to individuals for household, family, and other personal expenditures: Credit cards (Column A).	RCFDF615.
RC–D	6.c.(2)	Loans to individuals for household, family, and other personal expenditures: Other revolving credit plans (Column A).	RCFDF616.
RC–D	6.c.(3)	Loans to individuals for household, family, and other personal expenditures: Automobile loans (Column A).	RCFDK199.
RC–D	6.c.(4)	Loans to individuals for household, family, and other personal expenditures: Other consumer loans.	RCFDK210.
		Note: Items 6.c.(1), 6.c.(2), 6.c.(3), and 6.c.(4) of Schedule RC–D, Column A, will be combined into one data item.	
RC–D	M1.a	Unpaid principal balance of loans measured at fair value: Loans secured by real estate (Column A).	RCFDF790.
RC–D	M1.c.(1)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures: Credit cards (Column A).	RCFDF633.
RC–D	M1.c.(2)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures: Other revolving credit plans (Column A).	RCFDF634.

DATA ITEMS REMOVED—Continued

Schedule	Item	Item name	MDRM No.
RC–D	M1.c.(3)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures: Automobile loans (Column A).	RCFDK200.
RC–D	M1.c.(4)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures: Other consumer loans (Column A). Note: Items M1.c.(1), M1.c.(2), M1.c.(3), and M1.c.(4) of Schedule RC–D, Column A, will be combined into one data item.	RCFDK211.
RC–D	M6	Retained beneficial interests in securitizations	RCFDF651.
RC–L	1.a.(1)	Unused commitments for Home Equity Conversion Mortgage (HECM) reverse mortgages outstanding that are held for investment.	RCONJ477.
RC–L	1.a.(2)	Unused commitments for proprietary reverse mortgages outstanding that are held for investment. Note: Items 1.a.(1) and 1.a.(2) of Schedule RC–L will be combined into one data item.	RCONJ478.
RC–L	16.a	Over-the-counter derivatives: Net current credit exposure (Column B).	RCFDG419.
RC–L	16.b.(1)	Over-the-counter derivatives: Fair value of collateral: Cash—U.S. dollar (Column B).	RCFDG424.
RC–L	16.b.(2)	Over-the-counter derivatives: Fair value of collateral: Cash—Other currencies (Column B).	RCFDG429.
RC–L	16.b.(3)	Over-the-counter derivatives: Fair value of collateral: U.S. Treasury securities (Column B).	RCFDG434.
RC–L	16.b.(4)	Over-the-counter derivatives: Fair value of collateral: U.S. Government agency and U.S. Government-sponsored agency debt securities (Column B).	RCFDG439.
RC–L	16.b.(5)	Over-the-counter derivatives: Fair value of collateral: Corporate bonds (Column B).	RCFDG444.
RC–L	16.b.(6)	Over-the-counter derivatives: Fair value of collateral: Equity securities (Column B).	RCFDG449.
RC–L	16.b.(7)	Over-the-counter derivatives: Fair value of collateral: All other collateral (Column B).	RCFDG454.
RC–L	16.b.(8)	Over-the-counter derivatives: Fair value of collateral: Total fair value of collateral (Column B). Note: Amounts reported in items 16.a, 16.b.(1), 16.b.(2), 16.b.(3), 16.b.(4), 16.b.(5), 16.b.(6), 16.b.(7), and 16.b.(8), Column B, will be included in items 16.a, 16.b.(1), 16.b.(2), 16.b.(3), 16.b.(4), 16.b.(5), 16.b.(6), 16.b.(7), and 16.b.(8), Column E.	RCFDG459.
RC–M	2.b	Purchased credit card relationships and nonmortgage servicing assets. Note: Amounts reported in item 2.b will be included in item 2.c, All other identifiable intangible assets.	RCFDB026.
RC–M	3.f	Foreclosed properties from "GNMA loans" Note: Amounts reported in item 3.f will be included in item 3.c, Other real estate owned: 1–4 family residential properties.	RCONC979.

OTHER IMPACTS TO DATA ITEMS

Schedule	Item	Item name	MDRM No.
RC	10 (New)	Intangible assets Note: Items 10.a and 10.b of Schedule RC will be combined into this data item.	RCFD2143.
RC–B	2 (New)	U.S. Government agency and sponsored agency obligations (exclude mortgage-backed securities) (Columns A through D). Note: Items 2.a and 2.b of Schedule RC–B removed above will be combined into this data item (Columns A through D).	TBD (4 MDRMs).
RC–B	5.b (New)	Structured financial products (Columns A through D) Note: Items 5.b.(1), 5.b.(2), and 5.b.(3) of Schedule RC–B removed above will be combined into this data item (Columns A through D).	TBD (4 MDRMs).
RC–D	5.a (New)	Structured financial products Note: Items 5.a.(1), 5.a.(2), and 5.a.(3) of Schedule RC–D, Column A, removed above will be combined into this data item.	TBD.

OTHER IMPACTS TO DATA ITEMS—Continued

Schedule	Item	Item name	MDRM No.
RC–D	6.a.(1) (New)	Loans secured by 1–4 family residential properties Note: Items 6.a.(3)(a), 6.a.(3)(b)(1), and 6.a.(3)(b)(2) of Schedule RC–D, Column B, removed above will be combined into this data item for the consolidated bank in Column A, which will partially replace item 6.a, Column A.	TBD.
RC–D	6.a.(2) (New)	All other loans secured by real estate Note: Items 6.a.(1), 6.a.(2), 6.a.(4), and 6.a.(5) of Schedule RC–D, Column B, removed above will be combined into this data item for the consolidated bank in Column A, which will partially replace item 6.a, Column A.	TBD.
RC–D	6.c (New)	Loans to individuals for household, family and other personal expenditures (i.e., consumer loans) (includes purchased paper). Note: Items 6.c.(1), 6.c.(2), 6.c.(3), and 6.c.(4) of Schedule RC–D removed above will be combined into this data item.	TBD.
RC–D	M1.a.(1) (New)	Unpaid principal balance of loans measured at fair value: Loans secured by 1–4 family residential properties. Note: Items M1.a.(3)(a), M1.a.(3)(b)(1), and M1.a.(3)(b)(2) of Schedule RC–D, Column B, removed above will be combined into this data item for the consolidated bank in Column A, which will partially replace item M.1.a, Column A.	TBD.
RC–D	M1.a.(2) (New)	Unpaid principal balance of loans measured at fair value: All other loans secured by real estate. Note: Items M1.a.(1), M1.a.(2), M1.a.(4), and M1.a.(5) of Schedule RC–D, Column B, removed above will be combined into this data item for the consolidated bank in Column A, which will partially replace item M.1.a, Column A.	TBD.
RC–D	M1.c (New)	Unpaid principal balance of loans measured at fair value: Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper). Note: Items M1.c.(1), M1.c.(2), M1.c.(3), and M1.c.(4) of Schedule RC–D, Column A, removed above will be combined into this data item.	TBD.
RC–H	19 (Re-mapping)	Total trading assets Note: Schedule RC–D, item 12, Column B, will be moved to Schedule RC–H, item 19. The proposed threshold change applicable to Schedule RC–D applies to this item.	RCON3545.
RC–H	20 (Re-mapping)	Total trading liabilities Note: Schedule RC–D, item 15, Column B, will be moved to Schedule RC–H, item 20. The proposed threshold change applicable to Schedule RC–D applies to this item.	RCON3548.
RC–H	21 (New)	Total loans held for trading Note: The proposed threshold change applicable to Schedule RC–D applies to this item.	TBD.
RC–L	1.a (New)	Unused commitments for reverse mortgages outstanding that are held for investment. Note: Items 1.a.(1) and 1.a.(2) of Schedule RC–L removed above will be combined into this data item.	TBD.
RC–M	2.b (Re-mapping)	Goodwill Note: Schedule RC, item 10.a will be moved to Schedule RC–M, new item 2.b., and the phrase "other than goodwill" will be removed from the caption for Schedule RC–M, item 2.	RCFD3163.

Data Items With a Reduction in Frequency of Collection

SEMIANNUAL REPORTING

[June 30 and December 31]

Schedule	Item	Item name	MDRM No.
RI	M12	Noncash income from negative amortization on closed-end loans secured by 1–4 family residential properties.	RIADF228.
RC–B	M3	Amortized cost of held-to-maturity securities sold or transferred to available-for-sale or trading securities during the calendar year-to-date.	RCFD1778.

SEMIANNUAL REPORTING—Continued

[June 30 and December 31]

Schedule	Item	Item name	MDRM No.
RC–C, Part I	M7.a	Purchased credit-impaired loans held for investment accounted for in accordance with FASB ASC 310–30: Outstanding balance.	RCFDC779.
RC–C, Part I	M7.b	Purchased credit-impaired loans held for investment accounted for in accordance with FASB ASC 310–30: Amount included in Schedule RC–C, Part I, items 1 through 9.	RCFDC780.
RC–C, Part I	M8.a	Total amount of closed-end loans with negative amortization features secured by 1–4 family residential properties.	RCONF230.
RC–C, Part I	M8.b	Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1–4 family residential properties.	RCONF231.
RC–C, Part I	M8.c	Total amount of negative amortization on closed-end loans secured by 1–4 family residential properties included in the amount reported in Memorandum item 8.a above.	RCONF232.
RC–C, Part I	M12.a	Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year: Loans secured by real estate (Columns A through C).	RCFDG091, RCFDG092, RCFDG093.
RC–C, Part I	M12.b	Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year: Commercial and industrial loans (Columns A through C).	RCFDG094, RCFDG095, RCFDG096.
RC–C, Part I	M12.c	Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year: Loans to individuals for household, family, and other personal expenditures (Columns A through C).	RCFDG097, RCFDG098, RCFDG099.
RC–C, Part I	M12.d	Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year: All other loans and all leases (Columns A through C).	RCFDG100, RCFDG101, RCFDG102.
RC–L	1.b.(1)	Unused consumer credit card lines	RCFDJ455.
RC–L	1.b.(2)	Other unused credit card lines	RCFDJ456.
RC–L	11.a	Year-to-date merchant credit card sales volume: Sales for which the reporting bank is the acquiring bank.	RCFDC223.
RC–L	11.b	Year-to-date merchant credit card sales volume: Sales for which the reporting bank is the agent bank with risk.	RCFDC224.
RC–N	M7	Additions to nonaccrual assets during the quarter Note: This caption would be revised to "Additions to nonaccrual assets during the last 6 months."	RCFDC410.
RC–N	M8	Nonaccrual assets sold during the quarter Note: This caption would be revised to "Nonaccrual assets sold during the last 6 months."	RCFDC411.
RC–N	M9.a	Purchased credit-impaired loans accounted for in accordance with FASB ASC 310–30 (former AICPA Statement of Position 03–3): Outstanding balance (Columns A through C).	RCFDL183, RCFDL184, RCFDL185.
RC–N	M9.b	Purchased credit-impaired loans accounted for in accordance with FASB ASC 310–30 (former AICPA Statement of Position 03–3): Amount included in Schedule RC–N, items 1 through 7, above (Columns A through C).	RCFDL186, RCFDL187, RCFDL188.

ANNUAL REPORTING

[December]

Schedule	Item	Item name	MDRM No.
RC–M	9	Do any of the bank's Internet websites have transactional capability, *i.e.,* allow the bank's customers to execute transactions on their accounts through the website?	RCFD4088.
RC–M	14.a	Total assets of captive insurance subsidiaries	RCFDK193.

ANNUAL REPORTING—Continued

[December]

Schedule	Item	Item name	MDRM No.
RC–M	14.b	Total assets of captive reinsurance subsidiaries	RCFDK194.

Data Items With an Increase in Reporting Threshold

Schedule RI–D is to be completed by banks with foreign offices (including Edge or Agreement subsidiaries and International Banking Facilities) *and* $10 billion or more in total assets where foreign office revenues, assets, or net income exceed 10 percent of consolidated total revenues, total assets, or net income.

Schedule RC–D is to be completed by banks that reported total trading assets of *$10 million* or more in any of the four preceding calendar quarters and all banks meeting the FDIC's definition of a large or highly complex institution for deposit insurance assessment purposes.

TO BE COMPLETED BY BANKS WITH $10 BILLION OR MORE IN TOTAL ASSETS

Schedule	Item	Item name	MDRM No.
RC–B	M5.a	Asset-backed securities: Credit card receivables (Columns A, B, C, and D).	RCFDB838, RCFDB839, RCFDB840, RCFDB841.
RC–B	M5.b	Asset-backed securities: Home equity lines (Columns A, B, C, and D).	RCFDB842, RCFDB843, RCFDB844, RCFDB845.
RC–B	M5.c	Asset-backed securities: Automobile loans (Columns A, B, C, and D).	RCFDB846, RCFDB847, RCFDB848, RCFDB849.
RC–B	M5.d	Asset-backed securities: Other consumer loans (Columns A, B, C, and D).	RCFDB850, RCFDB851, RCFDB852, RCFDB853.
RC–B	M5.e	Asset-backed securities: Commercial and industrial loans (Columns A, B, C, and D).	RCFDB854, RCFDB855, RCFDB856, RCFDB857.
RC–B	M5.f	Asset-backed securities: Other (Columns A, B, C, and D)	RCFDB858, RCFDB859, RCFDB860, RCFDB861.
RC–B	M6.a	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by financial institutions (Columns A through D).	RCFDG348, RCFDG349, RCFDG350, RCFDG351.
RC–B	M6.b	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by real estate investment trusts (Columns A through D).	RCFDG352, RCFDG353, RCFDG354, RCFDG355.
RC–B	M6.c	Structured financial products by underlying collateral or reference assets: Corporate and similar loans (Columns A through D).	RCFDG356, RCFDG357, RCFDG358, RCFDG359.
RC–B	M6.d	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS issued or guaranteed by U.S. Government-sponsored enterprises (GSEs) (Columns A through D).	RCFDG360, RCFDG361, RCFDG362, RCFDG363.
RC–B	M6.e	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS not issued or guaranteed by GSEs (Columns A through D).	RCFDG364, RCFDG365, RCFDG366, RCFDG367.
RC–B	M6.f	Structured financial products by underlying collateral or reference assets: Diversified (mixed) pools of structured financial products (Columns A through D).	RCFDG368, RCFDG369, RCFDG370, RCFDG371.
RC–B	M6.g	Structured financial products by underlying collateral or reference assets: Other collateral or reference assets (Columns A through D).	RCFDG372, RCFDG373, RCFDG374, RCFDG375.

TO BE COMPLETED BY BANKS WITH $10 BILLION OR MORE IN TOTAL TRADING ASSETS

Schedule	Item	Item name	MDRM No.
RC–D	M2.a	Loans measured at fair value that are past due 90 days or more: Fair value (Column A).	RCFDF639.
RC–D	M2.b	Loans measured at fair value that are past due 90 days or more: Unpaid principal balance (Column A).	RCFDF640.
RC–D	M3.a	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by financial institutions (Column A).	RCFDG299.
RC–D	M3.b	Structured financial products by underlying collateral or reference assets: Trust preferred securities issued by real estate investment trusts (Column A).	RCFDG332.
RC–D	M3.c	Structured financial products by underlying collateral or reference assets: Corporate and similar loans (Column A).	RCFDG333.

TO BE COMPLETED BY BANKS WITH $10 BILLION OR MORE IN TOTAL TRADING ASSETS—Continued

Schedule	Item	Item name	MDRM No.
RC–D	M3.d	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS issued or guaranteed by U.S. Government-sponsored enterprises (GSEs) (Column A).	RCFDG334.
RC–D	M3.e	Structured financial products by underlying collateral or reference assets: 1–4 family residential MBS not issued or guaranteed by GSEs (Column A).	RCFDG335.
RC–D	M3.f	Structured financial products by underlying collateral or reference assets: Diversified (mixed) pools of structured financial products (Column A).	RCFDG651.
RC–D	M3.g	Structured financial products by underlying collateral or reference assets: Other collateral or reference assets (Column A).	RCFDG652.
RC–D	M4.a	Pledged trading assets: Pledged securities (Column A)	RCFDG387.
RC–D	M4.b	Pledged trading assets: Pledged loans (Column A)	RCFDG388.
RC–D	M5.a	Asset-backed securities: Credit card receivables	RCFDF643.
RC–D	M5.b	Asset-backed securities: Home equity lines	RCFDF644.
RC–D	M5.c	Asset-backed securities: Automobile loans	RCFDF645.
RC–D	M5.d	Asset-backed securities: Other consumer loans	RCFDF646.
RC–D	M5.e	Asset-backed securities: Commercial and industrial loans	RCFDF647.
RC–D	M5.f	Asset-backed securities: Other	RCFDF648.
RC–D	M7.a	Equity securities: Readily determinable fair values	RCFDF652.
RC–D	M7.b	Equity securities: Other	RCFDF653.
RC–D	M8	Loans pending securitization	RCFDF654.
RC–D	M9	Other trading assets	RCFDF655, RCFDF656, RCFDF657.
RC–D	M10	Other trading liabilities	RCFDF658, RCFDF659, RCFDF660.

TO BE COMPLETED BY BANKS WITH TOTAL TRADING ASSETS OF $10 MILLION OR MORE FOR ANY QUARTER OF THE PRECEDING CALENDAR YEAR

Schedule	Item	Item name	MDRM No.
RI	M8.a	Trading revenue: Interest rate exposures	RIAD8757.
RI	M8.b	Trading revenue: Foreign exchange exposures	RIAD8758.
RI	M8.c	Trading revenue: Equity security and index exposures	RIAD8759.
RI	M8.d	Trading revenue: Commodity and other exposures	RIAD8760.
RI	M8.e	Trading revenue: Credit exposures	RIADF186.

TO BE COMPLETED BY BANKS WITH COMPONENTS OF OTHER NONINTEREST INCOME IN AMOUNTS GREATER THAN $100,000 THAT EXCEED 7 PERCENT OF SCHEDULE RI, ITEM 5.L

Schedule	Item	Item name	MDRM No.
RI–E	1.a through 1.l	Other noninterest income (from Schedule RI, item 5.l)	RIADC013, RIADC014, RIADC016, RIAD4042, RIADC015, RIADF555, RIADT047, RIAD4461, RIAD4462, RIAD4463.

TO BE COMPLETED BY BANKS WITH COMPONENTS OF OTHER NONINTEREST EXPENSE IN AMOUNTS GREATER THAN $100,000 THAT EXCEED 7 PERCENT OF SCHEDULE RI, ITEM 7.D

Schedule	Item	Item name	MDRM No.
RI–E	2.a through 2.p	Other noninterest expense (from Schedule RI, item 7.d)	RIADC017, RIAD0497, RIAD4136, RIADC018, RIAD8403, RIAD4141, RIAD4146, RIADF556, RIADF557, RIADF558, RIADF559, RIADY923, RIADY924, RIAD4464, RIAD4467, RIAD4468.

TO BE COMPLETED BY BANKS WITH TOTAL TRADING ASSETS OF $10 MILLION OR MORE IN ANY OF THE FOUR PRECEDING CALENDAR QUARTERS AND ALL BANKS MEETING THE FDIC'S DEFINITION OF A LARGE OR HIGHLY COMPLEX INSTITUTION FOR DEPOSIT INSURANCE ASSESSMENT PURPOSES

Schedule	Item	Item name	MDRM No.
RC–K	7	Trading assets	RCFD3401.

Dated: January 2, 2018.

Karen Solomon,

Acting Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, December 27, 2017.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on December 27, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–00122 Filed 1–5–18; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2018, and ending on March 31, 2018, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 1.24 per centum per annum.

DATES: Rates are applicable January 1, 2018 to March 31, 2018.

ADDRESSES: Comments or inquiries may be mailed to Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia, 26106–1328. You can download this notice at the following internet addresses: *http://www.treasury.gov* or *http://www.federalregister.gov*.

FOR FURTHER INFORMATION CONTACT: Adam Charlton, Manager, Federal Borrowings Branch, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia, 26106–1328, (304) 480–5248; Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia, 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545] In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

Gary Grippo,

Deputy Assistant Secretary for Public Finance.

[FR Doc. 2018–00056 Filed 1–5–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Dated: January 2, 2018.

Douglas Poms,

International Tax Counsel, (Tax Policy).

[FR Doc. 2018–00123 Filed 1–5–18; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 83 Monday,

No. 5 January 8, 2018

Part II

The President

Executive Order 13820—Termination of Presidential Advisory Commission on Election Integrity

Federal Register
Vol. 83, No. 5
Monday, January 8, 2018

Presidential Documents

Title 3—

The President

Executive Order 13820 of January 3, 2018

Termination of Presidential Advisory Commission on Election Integrity

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Executive Order 13799 of May 11, 2017 (Establishment of Presidential Advisory Commission on Election Integrity), is hereby revoked, and the Presidential Advisory Commission on Election Integrity is accordingly terminated.

Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

THE WHITE HOUSE,
January 3, 2018.

[FR Doc. 2018–00240
Filed 1–5–18; 11:15 am]
Billing code 3295–F8–P

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Monday, January 8, 2018

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FEDERAL REGISTER PAGES AND DATE, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 4661/P.L. 115–98

United States Fire Administration, AFG, and SAFER Program Reauthorization Act of 2017 (Jan. 3, 2018; 131 Stat. 2239)

S. 1536/P.L. 115–99

Combating Human Trafficking in Commercial Vehicles Act (Jan. 3, 2018; 131 Stat. 2242)

S. 2273/P.L. 115–100

To extend the period during which vessels that are shorter than 79 feet in length and fishing vessels are not required to have a permit for discharges incidental to the normal operation of the vessel. (Jan. 3, 2018; 131 Stat. 2245)

Last List December 26, 2017

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