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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2016–0005]

RIN 0579–AE28

Importation of Orchids in Growing Media From Taiwan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of plants for planting to add orchid plants of the genus *Dendrobium* from Taiwan to the list of plants that may be imported into the United States in an approved growing medium, subject to specified growing, inspection, and certification requirements. We are taking this action in response to a request from the Taiwanese Government and after determining that the plants could be imported, under certain conditions, without resulting in the introduction into, or the dissemination within, the United States of a quarantine plant pest or noxious weed.

DATES: Effective March 1, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Lydia E. Colón, Senior Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2302.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in ''Subpart—Plants for Planting,'' §§ 319.37 through 319.37–14 (referred to below as the regulations) contain, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

Paragraph (a) of § 319.37–8 of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate plant pest risks. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37–8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

Paragraph (e) of § 319.37–8 provides conditions under which certain plants established in growing media may be imported into the United States. In addition to specifying the types of plants that may be imported, § 319.37–8(e) also:

- Specifies the types of growing media that may be used;
- Requires plants to be grown in accordance with written agreements between the Animal and Plant Health Inspection Service (APHIS) and the national plant protection organization (NPPO) of the country where the plants are grown and between the foreign NPPO and the grower;
- Requires the plants to be rooted and grown for a specified period in a greenhouse that meets certain requirements for pest exclusion and that is used only for plants being grown in compliance with § 319.37–8(e);
- Requires that the parent plants of the exported plants in growing media are produced from seed germinated in the production greenhouse or from mother plants that are grown and monitored for a specified period prior to export of the descendant plants;
- Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and
- Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

A phytosanitary certificate issued by the NPPO of the country in which the plants were grown that declares that the above conditions have been met must accompany the plants at the time of importation. These conditions have been used to successfully mitigate the risk of pest introduction associated with the importation into the United States of approved plants established in growing media.

In response to a request from the NPPO of Taiwan, we prepared a pest risk assessment (PRA) in order to identify the quarantine plant pests that could follow the importation of orchid plants of the genus *Dendrobium* in approved growing media from Taiwan into the United States. (Under § 319.37–1 of the regulations, a quarantine plant pest is a plant pest that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.)

Based on the findings of the PRA, we prepared a risk management document (RMD) to determine whether phytosanitary measures exist that would address this quarantine plant pest risk. The RMD suggested that the risk would be addressed if the plants met the general conditions of § 319.37–8(e).

As a result, on October 27, 2016, we published in the **Federal Register** (81 FR 74720–74722, Docket No. APHIS–2016–0005) a proposal [1] to amend the regulations by adding *Dendrobium* spp. from Taiwan to the list of plants established in an approved growing medium that may be imported into the United States. The plants will have to be produced, handled, and imported in accordance with the requirements of § 319.37–8(e) and be accompanied at the time of importation by a phytosanitary certificate issued by the NPPO of Taiwan that declares that those requirements have been met.

We solicited comments concerning our proposal for 60 days ending December 27, 2016. We received 11 comments by that date. They were from a scientific group, industry

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0005.*

organizations, a State department of agriculture, and private citizens. They are discussed below by topic.

General Comments

One commenter was supportive of the proposed action but requested that we also allow for the importation of carnivorous plants from Taiwan as they are grown in the same medium.

The request submitted by the NPPO of Taiwan concerned the importation of *Dendrobium* spp. orchids only. Were Taiwan to submit a request to import carnivorous plants in approved growing media we would consider and analyze that request as we would any other.

Another commenter, from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry (FDACS' DPI), stated that U.S. stakeholders from those areas potentially affected by any pest or disease outbreak from imported commodities should be invited to participate in site visits prior to the proposal of any rulemakings such as the one finalized by this document.

APHIS is committed to a transparent process and an inclusive role for stakeholders in our risk analysis process. To that end, we are currently considering ways to facilitate further stakeholder involvement, including site visits, during the initial stages of the development of PRAs. However, since this comment relates to the structure of APHIS' overall risk analysis process, and not to the importation of *Dendrobium* spp. orchids from Taiwan, it is outside the scope of the current rulemaking.

A commenter requested that we take into consideration the increased workload of border inspectors and the potential impact of additional imports on inspection times and treatment facilities.

APHIS has reviewed its resources and consulted with U.S. Customs and Border Protection and believes there is adequate coverage across the United States to ensure compliance with APHIS regulations, including the importation of *Dendrobium* spp. orchids in approved growing media, as established by this rule.

One commenter wanted to know how the importation of *Dendrobium* spp. orchids in approved growing media would benefit domestic orchid growers and consumers. The commenter speculated that the imported *Dendrobium* spp. orchids would be of lower quality compared to the domestic flowers. The commenter wanted to know whether APHIS was planning to implement any programs to assist domestic orchid growers in the face of foreign competition.

It is beyond APHIS' statutory authority to prohibit importation of a commodity for any reason other than to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. Under the Plant Protection Act (PPA), APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States.

Comments on Phytosanitary Risk

A commenter said that APHIS should further study the potential phytosanitary impacts and set out additional requirements prior to allowing for the importation of *Dendrobium* spp. orchids from Taiwan.

The PRA and RMD that accompanied the proposed rule evaluated the quarantine plant pest risk associated with the importation of *Dendrobium* spp. orchids in approved growing media from Taiwan into the United States. These documents provided scientific evidence that a prohibition on the importation of *Dendrobium* spp. orchids in approved growing media is not necessary in order to protect plant health in the United States, and the risk associated with such importation could be addressed by requiring the orchids and growing media to be produced in accordance with § 319.37–8(e). We prepared the PRA and RMD in accordance with relevant International Plant Protection Convention (IPPC) standards (see International Standards for Phytosanitary Measures (ISPM) No. 11, found at *http://www.acfs.go.th/sps/downloads/34163_ISPM_11_E.pdf*) and our own guidelines, and we are confident that they adequately evaluated the plant pest risk associated with the importation of *Dendrobium* spp. orchids in approved growing media from Taiwan into the United States.

Another commenter expressed concern that the NPPO of Taiwan or its designated representatives would not perform required inspections to a sufficiently high standard and therefore allow pests of concern to enter the United States.

The United States is a member of the World Trade Organization (WTO), and a signatory to the WTO's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) and the IPPC. In these capacities, the United States has agreed that any prohibitions it places on the importation of plants for planting will be based on scientific evidence, and will not be maintained without sufficient scientific evidence indicating that the prohibitions are necessary to protect plants within the United States. Like the United States, Taiwan is a signatory to the SPS Agreement. As such, it has agreed to respect the phytosanitary measures the United States imposes on the importation of plants and plant products from Taiwan when the United States demonstrates the need to impose these measures in order to protect plant health within the United States. Were pests of concern to be discovered in shipments of *Dendrobium* spp. orchids in approved growing media from Taiwan, we reserve the right to halt importation and address the issue with the NPPO of Taiwan.

Two commenters cited reports of unknown pests discovered in connection with orchids from Taiwan: microscopic mites in the flower pollen and sphagnum moss-eating insects in the growing media. These reports suggested to the commenters that the PRA and RMD prepared by APHIS might not be reliable.

After careful review of our pest interception data, we found that only 48 actionable pests were intercepted in connection with all species of orchids imported from Taiwan over the last 5 years, which is less than 10 interceptions per year. The pests intercepted specifically in connection with shipments of *Dendrobium* spp. orchids in the past 5 years were: Snails (three interceptions), mealybugs (one interception), thrips (two interceptions), and fungal plant pathogens (five interceptions). All orchid shipments containing actionable pests were fumigated, destroyed, or returned to Taiwan to ensure that no pests were able to enter the United States.

There have been no interceptions of mites on *Dendrobium* spp. orchids from Taiwan, nor have there been any interceptions of organisms in sphagnum moss. The approved growing media, including sphagnum moss, listed in paragraph (e)(1) of § 319.37–8 must be new and not have been previously used. Prior evaluation by APHIS has revealed that approved growing media not previously used for planting is unlikely to be colonized by quarantine pests. All growing media must be sourced, processed, packaged, handled and stored in a manner to ensure freedom from pests.

Another commenter argued that the potential for the presence of quarantine pests associated with approved growing media or plants is always present. The commenter said that these pests or evidence of their presence may not be

visible upon inspection or may be missed during the inspection process.

If the provisions of the proposed rule are adhered to, there will be a negligible risk that *Dendrobium* spp. orchids in approved growing media from Taiwan that are imported into the United States will harbor quarantine plant pests.

That being said, pursuant to §§ 319.37–3 and 319.37–11 of the regulations, lots of *Dendrobium* spp. orchids in approved growing media from Taiwan that consist of 13 or more plants must be imported to a United States Department of Agriculture plant inspection station for entry into the United States—we anticipate that almost all lots of *Dendrobium* spp. orchids in approved growing media from Taiwan that are exported to the United States will consist of more than 13 plants. Personnel at plant inspection stations are trained to detect plant pests and signs and symptoms of plant pests, including those that are difficult to detect, and have access to personnel with scientific expertise in identifying plant pests.

One commenter cited a previous rule (81 FR 5881–5888, Docket No. APHIS–2014–0041) that authorized the importation of *Oncidium* spp. orchids from Taiwan in approved growing media where we provided interception data related to the importation of *Phalaenopsis* spp. orchids in approved growing media from Taiwan. The commenter disagreed with our assertion that the average interception rate for pests of concern in connection with shipments of *Phalaenopsis* spp. orchids in approved growing media from Taiwan (23 consignments determined infested per year) is statistically insignificant.

We disagree and reiterate that an average of 23 infested shipments out of the approximately 20 million *Phalaenopsis* spp. orchids in approved growing media exported from Taiwan to the United States each year is a vanishingly small number that serves as proof of the efficacy of the systems approach. There is no evidence that any plant pests have been introduced into the United States through the importation of *Phalaenopsis* spp. orchids in growing media from Taiwan. The commenter provided no evidence to support the claim of statistical significance.

Another commenter referenced a 2012 study released by the European and Mediterranean Plant Protection Organization (EPPO) titled ''EPPO Study on the Risk of Imports of Plants for Planting.'' [2] The commenter highlighted several findings of that study which were determined by EPPO to represent high risk of plant pest introduction:

- Presence of growing medium, which could lead to the transport of many types of pests, including nematodes, fungi, insects, and invasive plants. The commenter cited the orchid snail (*Zonitoides arboreus*) in the State of Hawaii as an example, where the growth of the commercial potted orchid industry and that industry's use of moist bark and coconut fiber media were connected to a dramatic increase in snail damage and prevalence in the 1990s;
- Size of the plants. The commenter's assumption was that plants in growing medium would be larger than the bare root plants previously allowed importation. Larger plants are older and allow more time for pest infestation to occur and more places on the plant to infest;
- Production mode. Wild-collected plants are highest risk and easily disguised among cultivated plants when potted in identical containers and media;
- Unidentified risk. Those quarantine pests considered by the study were not known to represent a phytosanitary risk prior to their introduction, and their features would not have suggested a risk if assessed individually. The commenter cited the fungus *Ceratocystis fimbriata,* the causal agent of rapid Ohi'a death, which was previously unknown to science and was not on any list of quarantine pests, but is most similar to a disease shipped in potted plants.

The PRA contained an evaluation of the likelihood that quarantine snails, slugs, and nematodes that occur in Taiwan and are associated with *Dendrobium* spp. orchids will follow the pathway on *Dendrobium* spp. orchids in approved growing media to the United States. If the snails, slugs, or nematodes were considered to potentially follow the pathway, the PRA evaluated the likelihood of their introduction into the United States through this pathway, and the consequences of this introduction. Bark is not listed in § 319.37–8 as an approved growing medium and, while coconut fiber is among the approved growing media, as stated previously, all growing media must be new and not have been previously used, thus decreasing the risk that it will be infested.

Contrary to the commenter's assumption that plants imported in growing media would be older and therefore larger than the bare root plants already allowed importation, plants in growing media are subject to the same size and age restrictions as bare root plants. In addition, as mentioned earlier in this document, lots of 13 or more *Dendrobium* spp. orchids in approved growing media from Taiwan would have to be imported to a plant inspection station for entry into the United States where they will be carefully examined by trained inspectors.

Plants in growing media pose no greater risk of commingling with wild-collected plants than other types of plant material; indeed the more numerous inspections required of plants in growing media during the production process likely makes such commingling more difficult. However, if we determine that the standard of production agreed upon by APHIS and the NPPO of Taiwan is not being met (*e.g.,* commingling wild-collected plants with greenhouse grown plants), we reserve the right to halt importations of *Dendrobium* spp. orchids in approved growing media from Taiwan until such time that we are confident that the required systems approach will be followed.

C. fimbriata was originally described in connection with sweet potato in 1890. It has since been found on a wide variety of annual and perennial plants. It is not yet known whether the *C. fimbriata* causing rapid Ohi'a death in Hawaii represents a new strain imported on an as-yet unknown commodity or an existing strain that mutated in Hawaii. The PRA that accompanied the proposed rule provided a list of all pests of *Dendrobium* spp. orchids in approved growing media from Taiwan. This list was prepared using multiple data sources to ensure its completeness. For this same reason, we are confident it is accurate. If, however, a new pest is detected in connection with *Dendrobium* spp. orchids in approved growing media from Taiwan (*e.g.,* the causal agent for rapid Ohi'a death is conclusively linked to that commodity), APHIS will conduct further risk analysis in order to evaluate that pest to determine whether it is a quarantine pest, and whether it is likely to follow the importation pathway. If we determine that the pest is a quarantine pest and is likely to follow the pathway, we will work with the NPPO of Taiwan to adjust the pest list and related phytosanitary measures to prevent its introduction into the United States.

Another commenter expressed concern that APHIS would not have

[2] The EPPO study is located at *https://www.eppo.int/QUARANTINE/EPPO_Study_on_Plants_for_planting.pdf.*

sufficient inspectors at the ports of entry into the United States, allowing for pest entry.

APHIS has reviewed its resources and believes it has adequate resources available to ensure compliance with the conditions of the final rule.

One commenter stated that there is no virus testing at U.S. ports of entry and wanted to know if such testing occurs prior to export.

We do not consider virus testing necessary given that the PRA did not identify any quarantine viruses that occur in Taiwan and are associated with *Dendrobium* spp. orchids. If that situation were to change we would work with the NPPO of Taiwan to develop requirements relating to viral testing for any quarantine viruses.

Comments Regarding the Pest List

As part of the PRA, we prepared a list of plant pests that are associated with *Dendrobium* spp. orchids and that we determined to occur in Taiwan. We determined that three quarantine pests present in Taiwan could potentially follow the import pathway:

- *Helionothrips errans* (Williams), a thrips;
- *Scirtothrips dorsalis* Hood, the chili thrips; and
- *Spodoptera litura* (Fabricius), the Oriental leafworm moth.

FDACS' DPI stated that an accidental introduction of the Oriental leafworm moth would be particularly damaging to the State of Florida because it is a known pest of some of that State's most significant crops. The commenter said that Oriental leafworm moth is intercepted in connection with orchids at ports of entry on a regular basis and has been discovered at least five times in Florida nurseries since 2002; some of these finds were associated with *Dendrobium* spp.

The required systems approach will remove pests from pathway of importation of *Dendrobium* spp. orchids from Taiwan. Oriental leafworm moth eggs and larvae (the life stages of the pest associated with *Dendrobium* spp. orchids from Taiwan) are conspicuous pests that are relatively easy to detect upon visual inspection. Plants in growing media will be produced in pest exclusionary structures subject to required pest management programs. While it is true that Oriental leafworm moth has been intercepted at the ports, these interceptions have not been made in connection with orchids imported from China or Taiwan. Those Oriental leafworm moths associated with *Dendrobium* spp. orchids discovered in Florida greenhouses were likely associated with plants smuggled into the United States and not grown using the necessary containment methods to prevent infestation.

Another commenter said that because *Helionothrips errans* and the chili thrips are very small and insert their eggs into plant material, evidence of infestation may go undetected.

In addition to the pest exclusionary structures discussed previously, the post-harvest requirement that the plants be kept dry for 7–10 days prior to packing in approved growing media will allow for the emergence of any thrips previously undetected due to their location inside the plant.

One commenter pointed out that *Fusarium* (a genus of pathogenic fungi) exists in Taiwan and can be persistent in plant populations there since full control measures require the elimination of all contaminated plants and the implementation of strict disease control measures.

While we are aware that multiple species of *Fusarium* occur in Taiwan, none of these are known to be associated with *Dendrobium* spp. orchids. Further, when we have detected *Fusarium* spp. on susceptible commodities at ports of entry into the United States, the species detected have been ones that are already widely prevalent within the United States and therefore not considered to be quarantine pests.

Comments Regarding Additional Phytosanitary Measures

Two commenters pointed out that APHIS data shows that the systems approach does miss quarantine pests and argued that this was proof that further study and implementation of additional phytosanitary measures are needed before additional importation is allowed.

We have stated in the past that if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country and, thus, zero risk is not a realistic standard. We are confident, based on our knowledge and experience, that the required phytosanitary measures laid out in this rule and in the preceding proposed rule will be sufficient to reduce risk.

One commenter stated that because the required screens can be easily removed from greenhouse ventilators and reinstalled prior to the arrival of inspectors, we should implement a required monitoring system so that the screening cannot be removed between inspections.

We reserve the right to conduct monitoring of the development and implementation of the required pest management plans. However, we do not consider it necessary for us to require APHIS to monitor the development and implementation of each pest management plan within any specific place of production. For other export programs for plants and plant products from Taiwan to the United States, we have exercised joint monitoring responsibilities with the NPPO of Taiwan, and we have not encountered any issues that suggest we should modify this practice.

Another commenter said that a large percentage of plants imported into the State of Florida from China and Taiwan test positive for common orchid viruses. The commenter claimed that this is due to the use of large plant pieces for multiplication since, when this is done, any pathogens present on the original plant will also be present on those plants propagated from that plant's parts. The commenter argued that many pathogens, such as viruses, bacteria, and *Liberibacters* including zebra chip, citrus greening, and *Xylella fastidiosa,* may be present on plants but remain asymptomatic, thus escaping detection via visual inspection. As a result, the commenter recommended the following additional phytosanitary measures: The growing area should exclude all pests capable of vectoring pathogens and be inspected on a quarterly basis to ensure freedom from such pests; and a percentage of plants should be randomly indexed for pathogens at least biannually.

The PRA did not identify any viruses that can follow the pathway of importation of *Dendrobium* spp. orchids from Taiwan. In addition, the pathogens specifically referenced by the commenter are not orchid pests: Zebra chip is a pest of potatoes, citrus greening is a pest of citrus, and *Xylella fastidiosa* is the causal agent for diseases of olives, citrus, grapes, and landscape oleanders. Nonetheless, growers will be required to perform specific sanitary measures under the requirements of the rule and the operational workplan that APHIS enters into with the NPPO of Taiwan. The required greenhouse operating procedures will include measures designed to exclude pests from the greenhouse and implementation of a pest management plan to control disease vectors.

FDACS' DPI recommended that shipment of *Dendrobium* spp. orchids from Taiwan not be allowed into the State of Florida given that the climate in that State is particularly conducive to

the establishment of the pests associated with *Dendrobium* spp. orchids.

We have determined, for the reasons described in the RMD that accompanied the proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of *Dendrobium* spp. orchids from Taiwan. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenter.

Comments Regarding Economic Impact

One commenter stated that the increase of foreign-produced orchids in the domestic market will force most domestic orchid farmers out of business. A second commenter expressed the belief that this scenario would be driven by lower production costs, due mainly to lower labor rates in Taiwan and a climate more favorable to orchid production absent the need for artificial heating and cooling.

The importation *Dendrobium* spp. orchids into the United States from Taiwan is already allowed; it is only their importation in approved growing media that is not currently authorized. Taiwan may shift some exports from bare-rooted *Dendrobium* spp. orchids to rooted plants in approved growing media to meet U.S. consumer demand. We note that, by value, U.S. production of *Dendrobium* spp. orchids does not represent a large portion of U.S. orchid production (4 percent of production in 2014). While orchid producers in Taiwan may benefit from lower labor costs, the quantity of *Dendrobium* spp. plants in approved growing media exported to the United States will still depend on the ability of those producers and exporters to cover their production, transportation, and marketing costs in light of U.S. market prices. APHIS expects Taiwan orchid producers to incur higher production and shipping costs as compared to those for bare-rooted plants.

A commenter classified the proposed action as a lessening of regulatory requirements and predicted that it would prove detrimental to the domestic orchid industry by setting a precedent for less stringent regulations.

The Secretary considers many factors in making a determination to allow the import of a previously prohibited article, such as potential environmental effects and the economic effects associated with the introduction of a plant pest or noxious weed. The determination to allow an import under the PPA, however, is ultimately based on the Secretary's determination that the importation of a commodity will not result in the introduction into or dissemination within the United States of a plant pest or noxious weed. This approach is consistent with APHIS' obligations under the PPA and international trade agreements. Part of APHIS' mission is to facilitate exports, and we strive to do so. Success in this area is somewhat tied to factors out of our control, but we make every effort to assist domestic industry in securing access to export markets.

The same commenter expressed the belief that the Taiwanese orchid industry is given financial assistance by the government of that country that gives those growers an advantage over domestic producers who are not similarly assisted by the U.S. Government.

APHIS has no reason to believe that *Dendrobium* spp. producers or shippers are subsidized by Taiwan. However, even if they were, as stated elsewhere in this document, APHIS' determinations as to whether a new agricultural commodity can be safely imported are not affected by factors such as economic competitiveness.

Another commenter asked us to consider the future budgetary resources required for pest management programs and facilities given the likely increase the prevalence of quarantine pests overall.

APHIS allocates substantial resources for the identification of invasive pests, including pest identifiers and taxonomic specialists. We also allocate resources to States through the Cooperative Agricultural Pest Survey to ensure that the risk of invasive pests entering the United States is being sufficiently addressed. As stated previously, the required systems approach will allow *Dendrobium* spp. orchids in approved growing media to be safely imported into the United States from Taiwan.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 13771

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action will enable U.S. nurseries that purchase these orchids to benefit from their improved quality and reduced production time in comparison to bare-rooted plants.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 1 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Although the importation from Taiwan of bare-rooted *Dendrobium* spp. orchids is allowed, entry of this orchid genus in growing media is not authorized. In response to requests from the Taiwan Ministry of Agriculture and Forestry, APHIS is amending the regulations to allow the importation of *Dendrobium* spp. orchids in approved growing media into the United States, subject to specified growing, inspection, and certification requirements.

Orchids are the largest single group of potted flowering plants sold in the United States, and comprised about one-third of sales ($266 million of $788 million) for the potted flowering plants industry in 2014 (most recent data available). Sales of U.S.-produced *Dendrobium* spp. orchids in 2014 totaled $12.3 million. In 2016, the United States imported 5,948 metric tons (MT) of live orchids valued at $75 million, of which Taiwan supplied 79 percent (orchids valued at over $58.9 million).

The rule will enable Taiwanese exporters to bypass U.S. growers altogether and provide higher-valued, mature potted *Dendrobium* spp. orchids directly to wholesalers and retailers. However, such a scenario is considered unlikely, given the technical challenges and marketing costs incurred when shipping finished plants in pots. More likely, Taiwan will continue to export immature plants to U.S. nurseries to grow and sell as finished plants.

Import levels will depend on the ability of Taiwanese producers and exporters to cover their production, transportation, and marketing costs given U.S. market prices. U.S. nurseries that purchase *Dendrobium* spp. orchids will benefit from their improved quality and reduced production time in comparison to bare-rooted plants. The rule will increase competition for U.S. producers and importers of immature *Dendrobium* spp. orchids.

U.S. orchid producers numbered 158 in 2012, but the number of establishments that are small entities is not known. Given that orchid plants such as *Oncidium* spp. are already being imported from Taiwan in approved growing media and all orchid species are allowed importation without growing material, we expect that allowing the importation of *Dendrobium* spp. orchids in approved growing media will not significantly change the volume or value of orchids imported by the United States from Taiwan.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of *Dendrobium* spp. from Taiwan under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the *Regulations.gov* website.[3] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

[3] Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0005*. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this final rule, which were filed under 0579–0458, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.37–8 is amended as follows:

■ a. In paragraph (e) introductory text, by adding, in alphabetical order, an entry for ''*Dendrobium* spp. from Taiwan''; and

■ b. By revising the OMB citation at the end of the section.

The revision reads as follows:

§ 319.37–8 Growing media.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0190, 0579–0439, 0579–0454, and 0579–0458)

Done in Washington, DC, this 24th day of January 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–01737 Filed 1–29–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0939; Product Identifier 2017–SW–057–AD; Amendment 39–19174; AD 2018–03–01]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB139 and AW139 helicopters. This AD requires inspecting the main rotor blade (MRB) tip cap for disbonding. This AD is prompted by a report of the in-flight loss of an MRB tip cap. The actions of this AD are intended to prevent an unsafe condition on these helicopters.

DATES: This AD becomes effective February 14, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of February 14, 2018.

We must receive comments on this AD by April 2, 2018.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0939; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Matteo Ragazzi, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–711756; fax +39–0331–229046; or at *http://www.leonardocompany.com/-/bulletins.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0939.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued AD No. 2017–0175–E, dated September 13, 2017, to correct an unsafe condition for Leonardo S.p.A. (previously Agusta) Model AB139 and AW139 helicopters. EASA advises of an in-flight loss of an MRB tip cap on an AW139 helicopter where the pilot was able to safely land the helicopter. EASA further advises that an investigation determined the cause as incorrect bonding procedures used during production on MRB part number 3G6210A00131, serial numbers 3615, 3634, 3667, and 3729. According to EASA, this condition could result in loss of an MRB tip cap, increased pilot workload, and reduced control of the helicopter. To address this unsafe condition, the EASA AD requires a one-time inspection of the affected MRB tip caps within 5 hours and replacing the affected MRBs within 10 hours if not replaced as a result of the inspection. The EASA AD also prohibits installing the affected MRBs on a helicopter.

The FAA is in the process of updating Agusta's name change to Leonardo Helicopters on its type certificate. Because this name change is not yet effective, this AD specifies Agusta.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

Leonardo Helicopters has issued Emergency Alert Service Bulletin No. 139–508, dated September 12, 2017, which describes procedures for inspecting the tip cap for disbonding using a tap test and replacing the main rotor blade.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

AD Requirements

For helicopters with an MRB part-number (P/N) 3G6210A00131 that has serial number (S/N) 3615, 3634, 3667, or 3729 installed, this AD requires:

- Within 5 hours time-in-service (TIS), tap inspecting each tip cap for disbonding.
- If there is any disbonding, this AD requires, before further flight, removing the MRB from service.
- If there is no disbonding, this AD requires, within 10 hours TIS, removing the MRB from service.

This AD also prohibits installing these serial-numbered MRBs on any helicopter after the effective date of this AD.

Differences Between This AD and the EASA AD

The EASA AD requires that you return the removed blades to Leonardo Helicopters, and this AD does not.

Costs of Compliance

We estimate that this AD affects four helicopters of U.S. Registry.

At an average labor rate of $85 per work-hour, we estimate that operators may incur the following costs in order to comply with this AD. Tap inspecting the MRB tip caps will require 1 work-hour, for a cost per helicopter of $85. Replacing one MRB will require 4 work-hours, and $141,725 for required parts. Thus, we estimate a total cost of $568,345 per helicopter and $2,273,380 for the U.S. fleet to comply with this AD.

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

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the corrective actions required by this AD must be accomplished within 5 hours TIS.

Therefore, we find good cause that notice and opportunity for prior public

comment are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–03–01 Agusta S.p.A.: Amendment 39–19174; Docket No. FAA–2017–0939; Product Identifier 2017–SW–057–AD.

(a) Applicability

This AD applies to Agusta S.p.A. Model AB139 and AW139 helicopters, certificated in any category, with a main rotor blade (MRB) part number (P/N) 3G6210A00131 with a serial number (S/N) 3615, 3634, 3667, or 3729 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as disbonding of an MRB tip cap. This condition could result in loss of the MRB tip cap, severe vibrations, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective February 14, 2018.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 5 hours time-in-service (TIS), using a tap hammer or equivalent, tap inspect each MRB tip cap for disbonding in the area depicted in Figure 1 of Leonardo Helicopters Emergency Alert Service Bulletin No. 139–508, dated September 12, 2017 (EASB).

(i) If there is any disbonding, before further flight, remove the MRB from service.

(ii) If there is no disbonding, within 10 hours TIS, remove the MRB from service.

(2) After the effective date of this AD, do not install a MRB P/N 3G6210A00131 with a S/N 3615, 3634, 3667, or 3729 on any helicopter.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2017–0175–E, dated September 13, 2017. You may view the EASA AD on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2017–0939.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6210 Main Rotor Blades.

(i) Material Incorporated by Reference

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

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

(i) Leonardo Helicopters Emergency Alert Service Bulletin No. 139–508, dated September 12, 2017.

(ii) Reserved.

(3) For Leonardo Helicopters service information identified in this AD, contact Leonardo S.p.A. Helicopters, Matteo Ragazzi, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–711756; fax +39–0331–229046; or at *http://www.leonardocompany.com/-/bulletins.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on January 22, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–01573 Filed 1–29–18; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 33–7424A; 34–38771A; 35–26733A; 39–2354A; IC–22727A]

Amendments to Forms and Schedules To Remove Voluntary Provision of Social Security Numbers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical correction.

SUMMARY: This document makes a technical correction to a form

amendment that was published in the **Federal Register** on July 1, 1997. The Commission adopted revisions to forms and schedules filed under the Securities Act of 1933, the Securities Exchange Act of 1934, related provisions of the Investment Company Act of 1940 and the Public Utility Holding Company Act of 1935, and the Trust Indenture Act of 1939, to eliminate the portion of those forms that requests filers who are natural persons to furnish their Social Security numbers. The 1997 amendment to Form MSD inadvertently omitted the removal of the second of two references to Social Security numbers in the instructions to the form.

DATES: Effective January 30, 2018.

FOR FURTHER INFORMATION CONTACT: Brice Prince, at (202) 551–5777, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are making a technical correction to Form MSD[1] under the Exchange Act.[2]

List of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out above, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

■ 2. Amend General Instruction M to Form MSD (referenced in § 249.1100), by removing the text ''; social security numbers, if furnished, will be used only to assist the Commission in identifying applicants and, therefore, in promptly processing applications'' from the end of the third sentence.

Note: The text of Form MSD does not, and the amendments will not, appear in the Code of Federal Regulations.

* * * * *

[1] 17 CFR 249.1100, Form MSD, application for registration as a municipal securities dealer pursuant to rule 15Ba2–1 under the Securities Exchange Act of 1934 or amendment to such application.

[2] 15 U.S.C. 78a *et seq.*

Dated: January 24, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–01681 Filed 1–29–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2017–N–6285]

Medical Devices; Cardiovascular Devices; Classification of the Temporary Catheter for Embolic Protection During Transcatheter Intracardiac Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the temporary catheter for embolic protection during transcatheter intracardiac procedures into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the temporary catheter for embolic protection during transcatheter intracardiac procedures' classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective January 30, 2018. The classification was applicable on June 1, 2017.

FOR FURTHER INFORMATION CONTACT: Sadaf Toor, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1202, Silver Spring, MD 20993–0002, 301–796–6381, *Sadaf.Toor@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the temporary catheter for embolic protection during transcatheter intracardiac procedures as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act and part 807 (21 U.S.C. 360(k) and 21 CFR part 807, respectively).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On September 20, 2016, Claret Medical, Inc., submitted a request for De Novo classification of the Sentinel® Cerebral Protection System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on June 1, 2017, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 870.1251. We have named the generic type of device temporary catheter for embolic protection during transcatheter intracardiac procedures, and it is identified as a single use percutaneous catheter system that has (a) blood filter(s) at the distal end. This device is indicated for use while performing transcatheter intracardiac procedures. The device is used to filter blood in a manner that may prevent embolic material (thrombus/debris) from the transcatheter intracardiac procedure from traveling towards the cerebral circulation.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—TEMPORARY CATHETER FOR EMBOLIC PROTECTION DURING TRANSCATHETER INTRACARDIAC PROCEDURES RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Device failure leading to debris embolization and stroke or death	Non-clinical performance testing, Animal testing, and Clinical performance testing.
Impeded or disrupted blood flow leading to peripheral ischemia	Non-clinical performance testing, Animal testing, Clinical performance testing, and Labeling.
Device incompatibility with transcatheter intracardiac procedure device leading to prolonged treatment time or device failure.	Non-clinical performance testing, Animal testing, Clinical performance testing, and Labeling.
Adverse tissue reaction	Biocompatibility evaluation.
Infection	Sterilization validation, Shelf life testing, and Labeling.
Vascular injury due to device delivery, deployment, placement, or retrieval.	Non-clinical performance testing, Animal testing, Clinical performance testing, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. Add § 870.1251 to subpart B to read as follows:

§ 870.1251 Temporary catheter for embolic protection during transcatheter intracardiac procedures.

(a) *Identification.* This device is a single use percutaneous catheter system that has (a) blood filter(s) at the distal end. This device is indicated for use while performing transcatheter intracardiac procedures. The device is used to filter blood in a manner that may prevent embolic material (thrombus/debris) from the transcatheter intracardiac procedure from traveling towards the cerebral circulation.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Simulated-use testing in a clinically relevant bench anatomic model to assess the following:

(A) Delivery, deployment, and retrieval, including quantifying deployment and retrieval forces, and procedural time; and

(B) Device compatibility and lack of interference with the transcatheter intracardiac procedure and device.

(ii) Tensile strengths of joints and components, tip flexibility, torque strength, torque response, and kink resistance.

(iii) Flow characteristics.

(A) The ability of the filter to not impede blood flow.

(B) The amount of time the filter can be deployed in position and/or retrieved from its location without disrupting blood flow.

(iv) Characterization and verification of all dimensions.

(2) Animal testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be assessed:

(i) Delivery, deployment, and retrieval, including quantifying procedural time.

(ii) Device compatibility and lack of interference with the transcatheter intracardiac procedure and device.

(iii) Flow characteristics.

(A) The ability of the filter to not impede blood flow.

(B) The amount of time the filter can be deployed in position and/or retrieved from its location without disrupting blood flow.

(iv) Gross pathology and histopathology assessing vascular injury and downstream embolization.

(3) All patient contacting components of the device must be demonstrated to be biocompatible.

(4) Performance data must demonstrate the sterility of the device components intended to be provided sterile.

(5) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the identified shelf life.

(6) Labeling for the device must include:

(i) Instructions for use;

(ii) Compatible transcatheter intracardiac procedure devices;

(iii) A detailed summary of the clinical testing conducted; and

(iv) A shelf life and storage conditions.

(7) Clinical performance testing must demonstrate:

(i) The ability to safely deliver, deploy, and remove the device;

(ii) The ability of the device to filter embolic material while not impeding blood flow;

(iii) Secure positioning and stability of the position throughout the transcatheter intracardiac procedure; and

(iv) Evaluation of all adverse events including death, stroke, and vascular injury.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01638 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2017–N–6598]

Medical Devices; General and Plastic Surgery Devices; Classification of the Surgical Smoke Precipitator

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the surgical smoke precipitator into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the surgical smoke precipitator's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective January 30, 2018. The classification was applicable on December 20, 2016.

FOR FURTHER INFORMATION CONTACT: Steven Elliott, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2565, Silver Spring, MD 20993–0002, 301–796–5285, *steven.elliott@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the surgical smoke precipitator as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act and part 807 (21 U.S.C. 360(k) and 21 CFR part 807, respectively).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act

of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On May 26, 2015, Alesi Surgical submitted a request for De Novo classification of the Ultravision™ Visual Field Clearing System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 20, 2016, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 878.5050. We have named the generic type of device surgical smoke precipitator, and it is identified as a prescription device intended for clearance of the visual field by precipitation of surgical smoke and other aerosolized particulate matter created during laparoscopic surgery.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—SURGICAL SMOKE PRECIPITATOR RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Electrical shock	Electrical safety testing and Labeling.
Electromagnetic interference with other devices	Electromagnetic compatibility testing and Labeling.
Infection	Sterilization validation, Shelf-life validation, and Labeling.
Adverse tissue reaction	Biocompatibility evaluation.
Tissue injury	Animal testing; Software verification, validation, and hazard analysis; and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, surgical smoke precipitators are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. Add § 878.5050 to subpart F to read as follows:

§ 878.5050 Surgical smoke precipitator.

(a) *Identification.* A surgical smoke precipitator is a prescription device intended for clearance of the visual field by precipitation of surgical smoke and other aerosolized particulate matter created during laparoscopic surgery.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Adverse tissue reaction must be mitigated through the following:

(i) Chemical characterization and toxicological risk assessment of the treated surgical smoke.

(ii) Demonstration that the elements of the device that may contact the patient are biocompatible.

(2) Electrical safety and electromagnetic compatibility testing must demonstrate that the device performs as intended.

(3) Software verification, validation, and hazard analysis must be performed.

(4) Performance data must demonstrate the sterility of the patient contacting components of the device.

(5) Performance data must support the shelf life of the sterile components of the device by demonstrating continued functionality, sterility, and package integrity over the identified shelf life.

(6) Animal simulated-use testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Device must be demonstrated to be effectively inserted, positioned, and removed from the site of use.

(ii) Device must be demonstrated to precipitate surgical smoke particulates to clear the visual field for laparoscopic surgeries.

(iii) Device must be demonstrated to be non-damaging to the site of use and animal subject.

(7) Labeling must identify the following:

(i) Detailed instructions for use.

(ii) Electrical safety and electromagnetic compatibility information.

(iii) A shelf life.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01639 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice: 9867]

RIN 1400–AE01

Passports: Service Passports

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the interim final rule from the Department of State that established a new service passport, which may be approved for certain non-personal services contractors who travel abroad in support of and pursuant to a contract with the U.S. government. The Department received no public comments in response to the rule.

DATES: Effective January 30, 2018.

FOR FURTHER INFORMATION CONTACT: Sitara Kedilaya, Attorney-Adviser, *PassportRules@state.gov,* (202) 485–6500.

SUPPLEMENTARY INFORMATION: On September 30, 2016, the Department published an interim final rule amending 22 CFR part 51, to create a ''service passport'' that would be used by non-personal services contractors to carry out critical security, maintenance and other functions on behalf of the U.S. government. As noted in the interim final rule, the Department estimates that this rulemaking will affect approximately 1,000 non-personal services contractors per year. Further information concerning the rationale for this rule can be found in the interim final rule.

The Department provided 60 days for the public to comment on this rule. This period expired on November 29, 2016. The Department received no public comments.

The Regulatory Findings included with the interim final rule are incorporated herein. This rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

List of Subjects in 22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and visas, Reporting and recordkeeping requirements.

PART 51—PASSPORTS

■ Accordingly, the interim final rule amending 22 CFR part 51, which was published at 81 FR 67156 on September 30, 2016, is adopted as a final rule without change.

Carl C. Risch,

Assistant Secretary, Consular Affairs.

[FR Doc. 2018–01708 Filed 1–29–18; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0025]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Broadway Bridge across the Willamette River, mile 11.7, at Portland, OR. The deviation is necessary to make adjustments to new equipment. This deviation allows the bridge to operate the double bascule span one side at a time, single leaf.

DATES: This deviation is effective without actual notice from January 30, 2018, to 11:59 p.m. on February 23, 2018. For the purposes of enforcement, actual notice will be used from 1 a.m. on January 27, 2018, through January 30, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0025, is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *Steven.M.Fischer@uscg.mil.*

SUPPLEMENTARY INFORMATION: Multnomah County, the bridge owner, requested the Broadway Bridge be authorized to open half the span in single leaf mode to make adjustments to newly installed equipment. The Broadway Bridge crosses the Willamette River at mile 11.7, and provides 90 feet of vertical clearance above Columbia

River Datum 0.0 while in the closed-to-navigation position, and provides 125 feet of horizontal clearance with half the span open. This bridge operates in accordance with 33 CFR 117.897. This deviation allows the double bascule span of the Broadway Bridge across the Willamette River, mile 11.7, to operate the bridge in single leaf mode to marine traffic. The deviation period will be from 1 a.m. on January 27, 2018 to 11:59 p.m. on February 23, 2018. The bridge shall operate in accordance to 33 CFR 117.897 at all other times.

Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. One particular shipping company regularly requests a full bridge span opening in order to transit the river. In anticipation of this deviation, the shipping company has agreed to give a 7 day notice and a 24 hour notice to the bridge owner for a request of a full bridge span opening. If this procedure is followed, the bridge owner has agreed to comply with these requests.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at anytime. The bridge will be able to open for emergencies, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 16, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–01703 Filed 1–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber

CFR Correction

■ In Title 36 of the Code of Federal Regulations, Parts 200 to 299, revised as of July 1, 2017, on page 113, the heading of Part 223 and an effective date note are reinstated to read as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

Effective Date Note: At 73 FR 79386, Dec. 29, 2008, the heading of part 223 was revised, effective Jan. 28, 2009. At 74 FR 5107, Jan. 29, 2009, the amendment was delayed until Mar. 30, 2009. At 74 FR 14049, Mar. 30, 2009, the amendment was further delayed until May 29, 2009. At 74 FR 26091, June 1, 2009, the amendment was delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER, SPECIAL FOREST PRODUCTS, AND FOREST BOTANICAL PRODUCTS

[FR Doc. 2018–01806 Filed 1–29–18; 8:45 am]

BILLING CODE 1301–00–D

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2017–16]

Group Registration of Newspapers

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulation governing the group registration option for newspapers. The final rule will make a number of changes to reflect current Office practices, improve the efficiency of the registration process, and encourage broader participation in the registration system by reducing the burden on applicants. Specifically, the final rule revises the definition of ''newspaper issues'' and clarifies that the group registration option may be used to register any qualifying ''newspaper issue.'' The final rule will also require applicants to file an online application rather than a paper application, and upload a complete digital copy of each issue through the Office's electronic registration system instead of submitting them in physical form. Digital copies of newspapers received by the Office under this group registration option will be offered to the Library of Congress for use in its collections, and the Library intends to provide public access to these digital files, subject to the restrictions set forth in the final rule. Applicants may continue to submit their issues on microfilm on a voluntary basis (in addition to and at the same time as submitting digital files) if the microfilm is received by December 31, 2019. After that date, the microfilm option will be eliminated. The final rule clarifies that each issue in the group must be a new collective work and a work made for hire, that the author and copyright claimant for each issue must be the same person or organization, and that the claim must be received within three months after the publication of the earliest issue in the group. Finally, the rule confirms that a group registration covers each issue in the group, as well as any contributions appearing within each issue if they are fully owned by the copyright claimant and if they were first published in those issues.

DATES: Effective March 1, 2018.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202–707–8040, or by email at *rkas@loc.gov* and *ebertin@loc.gov;* or Anna Bonny Chauvet, Assistant General Counsel, by telephone at 202–707–8350, or by email at *achau@loc.gov.*

SUPPLEMENTARY INFORMATION: When Congress enacted the Copyright Act of 1976 (the ''Act''), it authorized the Register of Copyrights (the ''Register'') to specify by regulation the administrative classes of works for the purpose of seeking a registration, and the nature of the deposits required for each such class. In addition, Congress granted the Register the discretion to allow groups of related works to be registered with one application and one filing fee. *See* 17 U.S.C. 408(c)(1). Congress cited ''the various editions or issues of a daily newspaper'' as a specific example of a ''group of related works'' that would be suitable for a group registration. H.R. Rep. No. 94–1476, at 154 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770; S. Rep. No. 94–473, at 136 (1975).

On November 6, 2017, the Copyright Office (the ''Office'') published a notice of proposed rulemaking (''NPRM'') setting forth proposed amendments to the current regulation governing the group registration option for newspapers. 82 FR 51369 (Nov. 6, 2017). The NPRM proposed modifying the requirements for this group registration option in several respects. First, the proposed rule would make any newspaper, as defined in the regulation, eligible for a group registration, regardless of whether the Library of Congress (the ''Library'') has selected

that newspaper for its collections. Second, it would require applicants to register their newspapers through the Office's electronic registration system in lieu of using paper applications. Third, it would amend the deposit requirements by requiring applicants to upload their newspapers in digital form through the Office's electronic registration system. Applicants would no longer be required to submit microfilm containing a complete copy of each issue (although they could submit microfilm on a voluntary basis, in addition to uploading digital copies) if the microfilm is received by December 31, 2019, after which the microfilm option would be eliminated. Fourth, applicants would be required to submit their claim within three months after the date of publication for the earliest issue in the group, rather than the most recent issue. Fifth, the proposed rule confirmed that deposits submitted for the purpose of group registration would satisfy the mandatory deposit requirement under section 407. Sixth, it confirmed that the Library may provide limited access to any digital newspaper deposits that it receives from the Office under the group registration option, subject to certain restrictions. Seventh, the proposed rule codified the Office's longstanding position regarding the scope of a registration for a group of newspaper issues, namely, that a group registration covers each issue in the group, as well as the articles, photographs, illustrations, or other contributions appearing within each issue—if they are fully owned by the copyright claimant and if they were first published in those issues. Finally, the proposed rule would implement some technical amendments to address certain inconsistencies in the current regulation.

In response to the NPRM, the Office received comments from the News Media Alliance (''NMA''),[1] the Copyright Alliance, and three individuals.[2] The NMA ''strongly supports the Copyright Office's proposal to broaden the eligibility and formatting requirements for group registration of newspapers and to permit the submission of deposits in digital form rather than on microfilm.'' NMA Comment at 3. The Copyright Alliance endorsed NMA's comments and ''joins in applauding the Copyright Office for its proposal permitting broader group registration for newspapers and accepting deposits in PDF format rather than microfilm.'' Copyright Alliance Comment at 1. Of the individuals submitting comments, one expressed support for the proposed rule, one provided non-substantive comments, and one expressed concern about charging a filing fee.[3]

Having reviewed and carefully considered the comments, the Office now issues a final rule that is almost substantively identical to the proposed rule.[4] The NPRM stated that the Office will allow applicants to submit microfilm copies in addition to uploading digital copies (if the microfilm is received by December 31, 2019) in case publishers need time to develop quality assurance testing to ensure complete digital submissions. For avoidance of doubt, the final rule clarifies that microfilm copies may be used to cure deficiencies in the digital files at the Register's discretion. The final rule also clarifies that the microfilm copies must be submitted at the same time as the application, but the effective date of registration for this group option will be the date on which the Office receives an acceptable application, the digital files, and the proper filing fee.

The NMA asked the Office to clarify when the final rule will go into effect. As stated above, the final rule takes effect on March 1, 2018. Under the final rule, applicants will be required to submit their claims within three months after the date of publication for the earliest issue in the group. Thus, the final rule may be used to register newspaper issues published on or after December 1, 2017, provided that the claim is received in a timely manner.[5] Because applicants will be required to include a full month of issues in each claim, and because they will be required to submit their claims within three months after the publication of the earliest issue in the group (rather than the most recent issue), it makes sense for the final rule to go into effect on the first day of March 2018.

The NMA also asked the Office to provide more information on what publishers will be expected to do when the final rule goes into effect. The Office is developing several new resources in response to this request. The Office will prepare a video tutorial explaining how to complete the application for the group registration option for newspapers, as well as revise the ''help text'' within the application itself to reflect the new registration requirements. In addition, the Office will update its various circulars discussing the Office's practices and procedures for this group registration option, and the Office intends to make similar changes to the sections of the *Compendium of U.S. Copyright Office Practices, Third Edition* that discuss this option.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. In § 201.1, add a sentence at the end of paragraph (c)(6) to read as follows:

§ 201.1 Communication with the Copyright Office.

* * * * *

(c) * * *

(6) * * * Newspaper publishers that submit microfilm under § 202.4(e) of this chapter should mail their

[1] The NMA is a nonprofit organization that represents the interests of more than 2,000 newspapers in the United States and around the world.

[2] All of the comments submitted in response to the NPRM can be found on the Copyright Office's website at *https://www.copyright.gov/rulemaking/group-newspapers/*.

[3] The Office notes that the Copyright Act provides that ''[f]ees *shall* be paid to the Register of Copyrights'' when ''filing each application . . . for registration of a copyright claims.'' 17 U.S.C. 708(a), (a)(1) (emphasis added). The same individual also stated that the regulatory definition of ''newspaper'' should be amended to include ''electronic'' publications, because they ''have an important presence in our society.'' M. Ibarra Comment at 2. As noted in the NPRM, the final rule may be used to register a newspaper that is distributed in an electronic format, such as a PDF version of a physical publication. To do so, the publisher would have to demonstrate that each issue contains a fixed selection of content, each issue is distributed as a collective work, and the content of each issue does not change once it has been distributed to the public. 82 FR at 51373. To the extent the commenter is referring to newspaper websites, the Office reiterates that a website would not be considered a ''newspaper'' for purposes of this group registration option, for the reasons stated in the NPRM. *See id.*

[4] A few technical changes have been made to account for recent amendments resulting from other rulemakings. *See, e.g.,* 82 FR 29410 (Nov. 13, 2017).

[5] Issues published in October 2017 and November 2017 may be registered under the regulation currently set forth in § 202.3(b)(7), provided that the claim is received within three months after the date of publication for the most recent issue in the group. Issues published before October 1, 2017 are no longer eligible for the group registration option, and thus, would have to be registered on an individual basis. *See* 37 CFR 202.3(b)(7)(i)(F).

submissions to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559.

* * * * *

■ 3. In § 201.3, revise paragraph (c)(7) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

(7) Registration of a claim in a group of newspapers or a group of newsletters	80

* * * * *

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 4. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.3 [Amended]

■ 5. Amend § 202.3 in (b)(1)(v) by removing ''periodicals; newspapers;'' and adding in its place ''periodicals (including newspapers);'' and by removing and reserving paragraph (b)(7).

■ 6. Amend § 202.4 as follows:

■ a. Revise paragraph (b).

■ b. Add paragraph (e).

■ c. Amend paragraph (g)(4) by removing the second and third sentences.

■ d. Revise paragraph (n).

The revisions and addition read as follows:

§ 202.4 Group registration.

* * * * *

(b) *Definitions.* (1) For purposes of this section, unless otherwise specified, the terms used have the meanings set forth in §§ 202.3, 202.13, and 202.20.

(2) For purposes of this section, the term *Library* means the Library of Congress.

(3) For purposes of this section, a *periodical* is a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. In most cases, each issue will bear the same title, as well as numerical or chronological designations.

* * * * *

(e) *Group registration of newspapers.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of newspaper issues may be registered with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) *Issues must be newspapers.* All the issues in the group must be newspapers. For purposes of this section, a newspaper is a periodical (as defined in paragraph (b)(3) of this section) that is mainly designed to be a primary source of written information on current events, either local, national, or international in scope. A newspaper contains a broad range of news on all subjects and activities and is not limited to any specific subject matter. Newspapers are intended either for the general public or for a particular ethnic, cultural, or national group.

(2) *Requirements for newspaper issues.* Each issue in the group must be an all-new collective work that has not been previously published (except where earlier editions of the same newspaper are included in the deposit together with the final edition), each issue must be fixed and distributed as a discrete, self-contained collective work, and the claim in each issue must be limited to the collective work.

(3) *Author and claimant.* Each issue in the group must be a work made for hire, and the author and claimant for each issue must be the same person or organization.

(4) *Time period covered.* All the issues in the group must be published under the same continuing title, and they must be published within the same calendar month and bear issue dates within that month. The applicant must identify the earliest and latest date that the issues were published.

(5) *Application.* The applicant must complete and submit the online application designated for a group of newspaper issues. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(6) *Deposit.* (i) The applicant must submit one complete copy of the final edition of each issue published in the calendar month designated in the application. Each submission may also include earlier editions of the same newspaper issue, provided that they were published on the same date as the final edition. Each submission may also include local editions of the newspaper issue that were published within the same metropolitan area, but may not include national or regional editions that were distributed outside that metropolitan area.

(ii)(A) The issues must be submitted in a digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.,* not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through Digital Rights Management (DRM)). The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with this requirement.

(B) Until December 31, 2019, the applicant may also submit the complete issues on positive 35mm silver halide microfilm at the same time as the application, in addition to providing electronic copies of the newspaper issues pursuant to paragraph (e)(6)(ii)(A) of this section. The issues should be arranged on the microfilm in chronological order, and should be sent to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559. Should the applicant submit microfilm copies in addition to electronic files under paragraph (e)(6)(ii)(A) of this section, the effective date of registration for a group registration under paragraph (e) of this section will be the date on which the Office received an acceptable application, the electronic files submitted under paragraph (e)(6)(ii)(A), and the proper filing fee. If the electronic files submitted under paragraph (e)(6)(ii)(A) are deficient and the applicant also submits microfilm copies, the Register shall have discretion in determining whether the microfilm copies may be used to cure deficiencies in the electronic files (*e.g.,* an electronic file is missing some pages from one newspaper issue, but the microfilm contains a complete version of each issue in the group). In cases where the Register determines that microfilm copies can be used to cure deficiencies in the electronic files submitted under paragraph (e)(6)(ii)(A), the effective date of registration for a group registration under paragraph (e) of this section will be the date on which the Office received an acceptable application, the electronic files submitted under paragraph (e)(6)(ii)(A), and the proper filing fee.

(7) The application, the filing fee, and files specified in paragraph (e)(6)(ii)(A) of this section must be received by the Copyright Office within three months

after the date of publication for the earliest issue in the group.

* * * * *

(n) *The scope of a group registration.* When the Office issues a group registration under paragraph (e) of this section, the registration covers each issue in the group and each issue is registered as a separate collective work. When the Office issues a group registration under paragraph (g), (h), (i), or (k) of this section, the registration covers each work in the group and each work is registered as a separate work. For purposes of registration, the group as a whole is not considered a compilation, a collective work, or a derivative work under section 101, 103(b), or 504(c)(1) of title 17 of the United States Code.

■ 7. Add § 202.18 to read as follows:

§ 202.18 Access to electronic works.

(a) Access to electronic works received under § 202.4(e) will be available only to authorized users at Library of Congress premises in accordance with the policies listed below. Library staff may access such content off-site as part of their assigned duties via a secure connection.

(b) Access to each individual electronic work received under § 202.4(e) will be limited, at any one time, to two Library of Congress authorized users via a secure server over a secure network that serves Library of Congress premises.

(c) The Library of Congress will not make electronic works received under § 202.4(e) available to the public over the internet without rightsholders' permissions.

(d) ''Authorized user'' means Library of Congress staff, contractors, and registered researchers, and Members, staff and officers of the U.S. House of Representatives and the U.S. Senate for the purposes of this section.

(e) ''Library of Congress premises'' means all Library of Congress premises in Washington, DC, and the Library of Congress Packard Campus for Audio–Visual Conservation in Culpeper, VA.

■ 8. In § 202.19, revise paragraph (d)(2)(ix) to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(d) * * *

(2) * * *

(ix) In the case of published newspapers, a deposit submitted pursuant to and in compliance with the group registration option under § 202.4(e) shall be deemed to satisfy the mandatory deposit obligation under this section.

* * * * *

Dated: January 10, 2018.

Karyn Temple Claggett,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2018–01838 Filed 1–29–18; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6059–N8]

Medicare, Medicaid, and Children's Health Insurance Programs: Announcement of the Extension of Temporary Moratoria on Enrollment of Part B Non-Emergency Ground Ambulance Suppliers and Home Health Agencies in Designated Geographic Locations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Extension of temporary moratoria.

SUMMARY: This document announces the extension of statewide temporary moratoria on the enrollment of new Medicare Part B non-emergency ground ambulance providers and suppliers and Medicare home health agencies, subunits, and branch locations in Florida, Illinois, Michigan, Texas, Pennsylvania, and New Jersey, as applicable, to prevent and combat fraud, waste, and abuse. This extension also applies to the enrollment of new non-emergency ground ambulance suppliers and home health agencies, subunits, and branch locations in Medicaid and the Children's Health Insurance Program in those states. For purposes of these moratoria, providers that were participating as network providers in one or more Medicaid managed care organizations prior to January 1, 2018 will not be considered ''newly enrolling'' when they are required to enroll with the State Medicaid agency pursuant to a new statutory requirement, and thus will not be subject to the moratoria.

DATES: Applicable January 29, 2018.

FOR FURTHER INFORMATION CONTACT: Jung Kim, (410) 786–9370.

News media representatives must contact CMS' Public Affairs Office at (202) 690–6145 or email them at *press@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. CMS' Implementation of Temporary Enrollment Moratoria

The Social Security Act (the Act) provides the Secretary with tools and resources to combat fraud, waste, and abuse in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). In particular, section 1866(j)(7) of the Act provides the Secretary with authority to impose a temporary moratorium on the enrollment of new Medicare, Medicaid, or CHIP providers and suppliers, including categories of providers and suppliers, if the Secretary determines a moratorium is necessary to prevent or combat fraud, waste, or abuse under these programs. Regarding Medicaid, section 1902(kk)(4) of the Act requires States to comply with any moratorium imposed by the Secretary unless the State determines that the imposition of such moratorium would adversely impact Medicaid beneficiaries' access to care. In addition, section 2107(e)(1)(F) of the Act provides that the Medicaid provision in section 1902(kk) of the Act is also applicable to CHIP.

In the February 2, 2011 **Federal Register** (76 FR 5862), CMS published a final rule with comment period titled, ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers,'' which implemented section 1866(j)(7) of the Act by establishing new regulations at 42 CFR 424.570. Under § 424.570(a)(2)(i) and (iv), CMS, or CMS in consultation with the Department of Health and Human Services' Office of Inspector General (HHS OIG) or the Department of Justice (DOJ), or both, may impose a temporary moratorium on newly enrolling Medicare providers and suppliers if CMS determines that there is a significant potential for fraud, waste, or abuse with respect to a particular provider or supplier type, or particular geographic locations, or both. At § 424.570(a)(1)(ii), CMS stated that it would announce any temporary moratorium in a **Federal Register** document that includes the rationale for the imposition of such moratorium. This document fulfills that requirement.

In accordance with section 1866(j)(7)(B) of the Act, there is no judicial review under sections 1869 and

1878 of the Act, or otherwise, of the decision to impose a temporary enrollment moratorium. A provider or supplier may use the existing appeal procedures at 42 CFR part 498 to administratively appeal a denial of billing privileges based on the imposition of a temporary moratorium; however, the scope of any such appeal is limited solely to assessing whether the temporary moratorium applies to the provider or supplier appealing the denial. Under § 424.570(c), CMS denies the enrollment application of a provider or supplier if the provider or supplier is subject to a moratorium. If the provider or supplier was required to pay an application fee, the application fee will be refunded if the application was denied as a result of the imposition of a temporary moratorium (see § 424.514(d)(2)(v)(C)).

Based on this authority and our regulations at § 424.570, we initially imposed moratoria to prevent enrollment of new home health agencies, subunits, and branch locations [1] (hereafter referred to as HHAs) in Miami-Dade County, Florida and Cook County, Illinois, as well as surrounding counties, and Medicare Part B ground ambulance suppliers in Harris County, Texas and surrounding counties, in a notice issued on July 31, 2013 (78 FR 46339).[2] We exercised this authority again in a notice published on February 4, 2014 (79 FR 6475) when we extended the existing moratoria for an additional 6 months and expanded them to include enrollment of HHAs in Broward County, Florida; Dallas County, Texas; Harris County, Texas; and Wayne County, Michigan and surrounding counties, and enrollment of ground ambulance suppliers in Philadelphia, Pennsylvania and surrounding counties. Then, we further extended these moratoria in documents issued on August 1, 2014 (79 FR 44702), February 2, 2015 (80 FR 5551), July 28, 2015 (80 FR 44967), and February 2, 2016 (81 FR 5444). On August 3, 2016 (81 FR 51120), we extended the current moratoria for an additional 6 months and expanded them to statewide for the enrollment of new HHAs in Florida, Illinois, Michigan, and Texas, and Part B non-emergency ambulance suppliers in New Jersey, Pennsylvania, and Texas. Our August 3, 2016 publication also announced the lifting of temporary moratoria for all Part B emergency ambulance suppliers.[3] On January 9, 2017 (82 FR 2363) and July 28, 2017 (82 FR 35122), CMS again issued a document to extend the temporary moratoria for a period of 6 months. On September 1, 2017, CMS lifted the statewide temporary moratorium on the enrollment of new Medicare Part B non-emergency ground ambulance suppliers in Texas under the authority of § 424.570(d). This lifting of the moratorium also applied to Medicaid and CHIP in Texas. This decision was a result of the Presidential Disaster Declaration signed on August 25, 2017 for several counties in the State of Texas due to Hurricane Harvey. Upon declaration of the disaster, CMS carefully reviewed the potential impact of continued moratoria in Texas, and decided to lift the temporary enrollment moratorium on non-emergency ground ambulance suppliers in Texas in order to aid in the disaster response. CMS published a formal announcement of this decision on November 3, 2017 (82 FR 51274).

B. Determination of the Need for Moratoria

In imposing these enrollment moratoria, CMS considered both qualitative and quantitative factors suggesting a high risk of fraud, waste, or abuse. CMS relied on law enforcement's longstanding experience with ongoing and emerging fraud trends and activities through civil, criminal, and administrative investigations and prosecutions. CMS' determination of a high risk of fraud, waste, or abuse in these provider and supplier types within these geographic locations was then confirmed by CMS' data analysis, which relied on factors the agency identified as strong indicators of risk. (For a more detailed explanation of this determination process and of these authorities, see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 moratoria document (79 FR 6475)).

Because fraud schemes are highly migratory and transitory in nature, many of CMS' program integrity authorities and anti-fraud activities are designed to allow the agency to adapt to emerging fraud in different locations. The laws and regulations governing CMS' moratoria authority give us flexibility to use any and all relevant criteria for future moratoria, and CMS may rely on additional or different criteria as the basis for future moratoria.

1. Application to Medicaid and the Children's Health Insurance Program (CHIP)

The February 2, 2011, final rule also implemented section 1902(kk)(4) of the Act, establishing new Medicaid regulations at § 455.470. Under § 455.470(a)(1) through (3), the Secretary may impose a temporary moratorium, in accordance with § 424.570, on the enrollment of new providers or provider types after consulting with any affected State Medicaid agencies. The State Medicaid agency must impose a temporary moratorium on the enrollment of new providers or provider types identified by the Secretary as posing an increased risk to the Medicaid program unless the State determines that the imposition of such moratorium would adversely affect Medicaid beneficiaries' access to medical assistance and so notifies the Secretary. The final rule also implemented section 2107(e)(1)(D) of the Act by providing, at § 457.990 of the regulations, that all of the provisions that apply to Medicaid under sections 1902(a)(77) and 1902(kk) of the Act, as well as the implementing regulations, also apply to CHIP.

Section 1866(j)(7) of the Act authorizes imposition of a temporary enrollment moratorium for Medicare, Medicaid, and/or CHIP, ''if the Secretary determines such moratorium is necessary to prevent or combat fraud, waste, or abuse under either such program.'' While there may be exceptions, CMS believes that generally, a category of providers or suppliers that poses a risk to the Medicare program also poses a similar risk to Medicaid and CHIP. Many of the anti-fraud provisions in the Act reflect this concept of ''reciprocal risk'' in which a provider that poses a risk to one program poses a risk to the other programs. For example, section 1902(a)(39) of the Act requires State Medicaid agencies to terminate the participation of an individual or entity if such individual or entity is

[1] As noted in the preamble to the final rule with comment period implementing the moratorium authority (February 2, 2011, 76 FR 5870), home health agency subunits and branch locations are subject to the moratoria to the same extent as any other newly enrolling home health agency.

[2] CMS has identified an error in the provider and beneficiary saturation data described in our July 31, 2013 **Federal Register** notice (78 FR 46339). We have subsequently revised the methodology by which we determine provider and beneficiary saturation. Following these revisions to the methodology, we simulated application of our current 2016 methodology to the 2013 data, and determined that the 2013 decision to impose the moratorium would not have been impacted had the revised methodology been applied. Provider saturation remains one of the criteria used to determine whether to implement a moratorium. CMS has made market saturation data publicly available at *https://data.cms.gov/market-saturation*.

[3] CMS also concurrently announced a demonstration under the authority provided in section 402(a)(l)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–l(a)(l)(J)) that allows for access to care-based exceptions to the moratoria in certain limited circumstances after a heightened review of that provider has been conducted. This exception process also applies to Medicaid and CHIP providers in each state. This announcement may be found in the **Federal Register** document issued on August 3, 2016 (81 FR 51116).

terminated under Medicare or any other State Medicaid plan. Additional provisions in the Act also support the determination that categories of providers and suppliers pose the same risk to Medicaid as to Medicare. Section 1866(j) of the Act requires us to establish levels of screening for categories of providers and suppliers based on the risk of fraud, waste, and abuse determined by the Secretary. Section 1902(kk) of the Act requires State Medicaid agencies to screen providers and suppliers based on the same levels established for the Medicare program. This reciprocal concept is also reflected in the Medicare moratoria regulations at § 424.570(a)(2)(ii) and (iii), which permit CMS to impose a Medicare moratorium based solely on a State imposing a Medicaid moratorium. Accordingly, CMS has determined that there is a reasonable basis for concluding that a category of providers or suppliers that poses a risk to Medicare also poses a similar risk to Medicaid and CHIP, and that a moratorium in all of these programs is necessary to effectively combat this risk.

2. Consultation With Law Enforcement

In consultation with the HHS Office of Inspector General (OIG) and the Department of Justice (DOJ), CMS previously identified two provider and supplier types in nine geographic locations that warrant a temporary enrollment moratorium. For a more detailed discussion of this consultation process, see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 moratoria document (79 FR 6475).

3. Data Analysis

In addition to consulting with law enforcement, CMS also analyzed its own data to identify specific provider and supplier types within geographic locations with significant potential for fraud, waste or abuse, therefore warranting the imposition of enrollment moratoria.

4. Beneficiary Access to Care

Beneficiary access to care in Medicare, Medicaid, and CHIP is of critical importance to CMS and its State partners, and CMS carefully evaluated access for the target moratorium locations with every imposition and extension of the moratoria. Prior to imposing and extending these moratoria, CMS reviewed Medicare data for these areas and found no concerns with beneficiary access to HHAs or ground ambulance suppliers. CMS also consulted with the appropriate State Medicaid Agencies and with the appropriate State Departments of Emergency Medical Services to determine if the moratoria would create access to care concerns for Medicaid and CHIP beneficiaries. All of CMS' State partners were supportive of CMS' analysis and proposals, and together with CMS, determined that continuation of these moratoria would not create access to care issues for Medicaid or CHIP beneficiaries.

5. When a Temporary Moratorium Does Not Apply

Under § 424.570(a)(1)(iii), a temporary moratorium does not apply to any of the following: (1) Changes in practice location (2) changes in provider or supplier information, such as phone number or address; or (3) changes in ownership (except changes in ownership of HHAs that require initial enrollment under § 424.550). Also, in accordance with § 424.570(a)(1)(iv), a temporary moratorium does not apply to any enrollment application that a Medicare contractor has already approved, but has not yet entered into the Provider Enrollment, Chain, and Ownership System (PECOS) at the time the moratorium is imposed.

6. Lifting a Temporary Moratorium

In accordance with § 424.570(b), a temporary enrollment moratorium imposed by CMS will remain in effect for 6 months. If CMS deems it necessary, the moratorium may be extended in 6-month increments. CMS will evaluate whether to extend or lift the moratorium before the end of the initial 6-month period and, if applicable, any subsequent moratorium periods. If one or more of the moratoria announced in this document are extended, CMS will publish a document regarding such extensions in the **Federal Register**.

As provided in § 424.570(d), CMS may lift a moratorium at any time if the President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if circumstances warranting the imposition of a moratorium have abated, if the Secretary has declared a public health emergency, or if, in the judgment of the Secretary, the moratorium is no longer needed.

Once a moratorium is lifted, the provider or supplier types that were unable to enroll because of the moratorium will be designated to the ''high'' screening level in accordance with §§ 424.518(c)(3)(iii) and 455.450(e)(2) if such provider or supplier applies at any time within 6 months from the date the moratorium was lifted.

II. Extension of Home Health and Ambulance Moratoria—Geographic Locations

CMS currently has in place statewide moratoria on newly enrolling HHAs in Florida, Illinois, Michigan, and Texas and Part B non-emergency ambulance suppliers in New Jersey and Pennsylvania. Under section 1932(d)(6)(A) of the Act, network providers in a Medicaid managed care organization are required to enroll with the State Medicaid agency no later than January 1, 2018. For purposes of these moratoria, providers that were participating as network providers in one or more managed care organizations before January 1, 2018 will not be considered ''newly enrolling'' when they are required to enroll with the State under this statutory requirement; and thus will not be subject to the moratoria.

As provided in § 424.570(b), CMS may deem it necessary to extend previously-imposed moratoria in 6-month increments. Under this authority, CMS is extending the temporary moratoria on the Medicare enrollment of HHAs and Part B non-emergency ground ambulance providers and suppliers in the geographic locations discussed herein. Under the regulations at § 455.470 and § 457.990, these moratoria also apply to the enrollment of HHAs and non-emergency ground ambulance providers and suppliers in Medicaid and CHIP in those locations. Under § 424.570(b), CMS is required to publish a document in the **Federal Register** announcing any extension of a moratorium, and this extension of moratoria document fulfills that requirement.

CMS consulted with the HHS–OIG regarding the extension of the moratoria on new HHAs and Part B non-emergency ground ambulance providers and suppliers in all of the moratoria states, and HHS–OIG agrees that a significant potential for fraud, waste, and abuse continues to exist regarding those provider and supplier types in these geographic areas. The circumstances warranting the imposition of the moratoria have not yet abated, and CMS has determined that the moratoria are still needed as we monitor the indicators and continue with administrative actions to combat fraud and abuse, such as payment suspensions and revocations of provider/supplier numbers. (For more information regarding the monitored indicators, see the February 4, 2014 moratoria document (79 FR 6475)).

Based upon CMS' consultation with the relevant State Medicaid agencies, CMS has concluded that extending

these moratoria will not create an access to care issue for Medicaid or CHIP beneficiaries in the affected states at this time. CMS also reviewed Medicare data for these states and found there are no current problems with access to HHAs or ground ambulance providers or suppliers. Nevertheless, the agency will continue to monitor these locations to make sure that no access to care issues arise in the future.

Based upon our consultation with law enforcement and consideration of the factors and activities described previously, CMS has determined that the current temporary enrollment moratoria should be extended for an additional 6 months.

III. Summary of the Moratoria Locations

CMS is executing its authority under sections 1866(j)(7), 1902(kk)(4), and 2107(e)(1)(D) of the Act to extend and implement temporary enrollment moratoria on HHAs for all counties in Florida, Illinois, Michigan, and Texas, as well as Part B non-emergency ground ambulance providers and suppliers for all counties in New Jersey and Pennsylvania.

IV. Clarification of Right to Judicial Review

Section 1866(j)(7)(B) of the Act states that there shall be no judicial review under section 1869, section 1878, or otherwise, of a temporary moratorium imposed on the enrollment of new providers of services and suppliers if the Secretary determines that the moratorium is necessary to prevent or combat fraud, waste, or abuse. Accordingly, our regulations at 42 CFR 498.5(l)(4) state that for appeals of denials based on a temporary moratorium, the scope of review will be limited to whether the temporary moratorium applies to the provider or supplier appealing the denial. The agency's basis for imposing a temporary moratorium is not subject to review. Our regulations do not limit the right to seek judicial review of a final agency decision that the temporary moratorium applies to a particular provider or supplier. In the preamble to the February 2, 2011 (76 FR 5918) final rule with comment period establishing this regulation, we explained that ''a provider or supplier may administratively appeal an adverse determination based on the imposition of a temporary moratorium up to and including the Department Appeal Board (DAB) level of review.'' We are clarifying that providers and suppliers that have received unfavorable decisions in accordance with the limited scope of review described in § 498.5(l)(4) may seek judicial review of those decisions after they exhaust their administrative appeals. However, we reiterate that section 1866(j)(7)(B) of the Act precludes judicial review of the agency's basis for imposing a temporary moratorium.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

CMS has examined the impact of this document as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major regulatory actions with economically significant effects ($100 million or more in any 1 year). This document will prevent the enrollment of new home health providers and Part B non-emergency ground ambulance suppliers in Medicare, Medicaid, and CHIP in certain states. Though savings may accrue by denying enrollments, the monetary amount cannot be quantified. Since the imposition of the initial moratoria on July 31, 2013, more than 1187 HHAs and 24 ambulance companies in all geographic areas affected by the moratoria had their applications denied. We have found the number of applications that are denied after 60 days declines dramatically, as most providers and suppliers will not submit applications during the moratoria period. Therefore, this document does not reach the economic threshold, and thus is not considered a major action.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any one year. Individuals and states are not included in the definition of a small entity. CMS is not preparing an analysis for the RFA because it has determined, and the Secretary certifies, that this document will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if an action may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS defines a small rural hospital as a hospital that is located outside of a metropolitan statistical area (MSA) for Medicare payment purposes and has fewer than 100 beds. CMS is not preparing an analysis for section 1102(b) of the Act because it has determined, and the Secretary certifies, that this document will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any regulatory action whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2017, that threshold is approximately $148 million. This document will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017). It has been determined that this notice is a transfer notice that does not impose more than de minimis costs and thus is not a regulatory action for the purposes of E.O. 13771.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed regulatory action (and subsequent final action) that imposes substantial direct requirement costs on state and local governments, preempts

state law, or otherwise has Federalism implications. Because this document does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this document was reviewed by the Office of Management and Budget.

Dated: January 12, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–01783 Filed 1–29–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 10

[NPS–WASO–NAGPRA–24780; PPWOVPADU0/PPMPRLE1Y.Y00000]

RIN 1024–AE40

Civil Penalties Inflation Adjustments

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This rule revises U.S. Department of the Interior regulations implementing the Native American Graves Protection and Repatriation Act to provide for annual adjustments of civil penalties to account for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

DATES: This rule is effective on January 30, 2018.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (''the Act''). The Act requires Federal agencies to adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through rulemaking and then make subsequent annual adjustments for inflation no later than January 15 of each year.

II. Calculation of Annual Adjustments

The Office of Management and Budget (OMB) recently issued guidance to assist Federal agencies in implementing the annual adjustments required by the Act which agencies must complete by January 15, 2018. *See* December 15, 2017, Memorandum for the Heads of Executive Departments and Agencies, from Mick Mulvaney, Director, Office of Management and Budget, re: *Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M–18–03). The guidance states that the cost-of-living adjustment multiplier for 2018, based on the Consumer Price Index (CPI–U) for the month of October 2017, not seasonally adjusted, is 1.02041. (The annual inflation adjustments are based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U.) The guidance instructs agencies to complete the 2018 annual adjustment by multiplying each applicable penalty by the multiplier, 1.02041, and rounding to the nearest dollar. Further, the guidance instructs agencies to apply the multiplier to the most recent penalty amount that includes the catch-up adjustment required by the Act.

The annual adjustment applies to all civil monetary penalties with a dollar amount that are subject to the Act. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. This final rule adjusts the following civil monetary penalties contained in the Department regulations implementing the Native American Graves Protection and Repatriation Act (NAGPRA) for 2018 by multiplying 1.02041 by each penalty amount as updated by the catch-up adjustment made in 2017:

CFR citation	Description of the penalty	Current penalty including catch-up adjustment	Annual adjustment (multiplier)	Adjusted penalty
43 CFR 10.12(g)(2)	Failure of Museum to Comply	$6,533	1.02041	$6,666
43 CFR 10.12(g)(3)	Continued Failure to Comply Per Day	1,307	1.02041	1,334

Consistent with the Act, the adjusted penalty levels for 2018 will take effect immediately upon the effective date of the adjustment. The adjusted penalty levels for 2018 will apply to penalties assessed after that date including, if consistent with agency policy, assessments associated with violations that occurred on or after November 2, 2015. The Act does not, however, change previously assessed penalties that the Department is collecting or has collected. Nor does the Act change an agency's existing statutory authorities to adjust penalties.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed

this rule in a manner consistent with these requirements.

B. Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is not subject to E.O. 13771 because it is neither a significant regulatory action as defined in Section 3(f) of E.O. 12866 or a deregulatory action under E.O. 13771.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The RFA does not apply to this final rule because the Office of the Secretary is not required to publish a proposed rule for the reasons explained below in Section III.M.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

J. Paperwork Reduction Act

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

K. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Administrative Procedure Act

The Act requires agencies to publish annual inflation adjustments by no later than January 15, 2018 and by no later than January 15 each subsequent year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, we are issuing the 2018 annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians—claims, Indians—lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Office of the Secretary amends 43 CFR part 10 as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 16 U.S.C. 470dd; 25 U.S.C. 9, 3001 *et seq.*

§ 10.12 [Amended]

■ 2. In § 10.12:

■ a. In paragraph (g)(2) introductory text, remove ''$6,533'' and add in its place ''$6,666''.

■ b. In paragraph (g)(3), remove ''$1,307'' and add in its place ''$1,334''.

Jason Larrabee,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, exercising the authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2018–01680 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket 80–286; FCC 17–55]

Jurisdictional Separations and Referral to the Federal-State Joint Board; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document corrects errors in the Code of Federal Regulations relating to the Commission's jurisdictional separations rules. In a rule published in the **Federal Register** on June 2, 2017, the date ''December 30, 2018'' was inadvertently used, and is now replaced by ''December 31, 2018,'' the date adopted in the Commission's underlying order.

DATES: Effective January 30, 2018.

FOR FURTHER INFORMATION CONTACT: Rhonda Lien, Pricing Policy Division, Wireline Competition Bureau, at (202) 418–1540 or at *Rhonda.Lien@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document contains correcting amendments to the Code of Federal Regulations to correct an erroneous date introduced in a **Federal Register** document published June 2, 2017 (82 FR 25535). A prior attempt to correct that date through a document published July 14, 2017 (82 FR 32489) was unsuccessful.

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

For the reasons discussed in the preamble, the Federal Communications Commission corrects 47 CFR part 36 by making the following correcting amendments:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

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

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410 and 1302 unless otherwise noted.

§§ 36.3, 36.123, 36.124, 36.125, 36.126, 36.141, 36.142, 36.152, 36.154, 36.155, 36.156, 36.157, 36.191, 36.212, 36.214, 36.372, 36.374, 36.375, 36.377, 36.378, 36.379, 36.380, 36.381, and 36.382 [Amended]

■ 2. In 47 CFR part 36, remove the date ''December 30, 2018'' and add, in its place, everywhere it appears the date ''December 31, 2018'' in the following places:

■ a. Section 36.3(a) through (c), (d) introductory text, and (e);
■ b. Section 36.123(a)(5) and (6);
■ c. Section 36.124(c) and (d);
■ d. Section 36.125(h) and (i);
■ e. Section 36.126(b)(6), (c)(4), (e)(4), and (f)(2);
■ f. Section 36.141(c);
■ g. Section 36.142(c);
■ h. Section 36.152(d);
■ i. Section 36.154(g);
■ j. Section 36.155(b);
■ k. Section 36.156(c);
■ l. Section 36.157(b);
■ m. Section 36.191(d);
■ n. Section 36.212(c);
■ o. Section 36.214(a);
■ p. Section 36.372;
■ q. Section 36.374(b) and (d);
■ r. Section 36.375(b)(4) and (5);
■ s. Section 36.377(a) introductory text, (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii); (a)(5)(vii), and (a)(6)(vii);
■ t. Section 36.378(b)(1);
■ u. Section 36.379(b)(1) and (2);
■ v. Section 36.380(d) and (e);
■ w. Section 36.381(c) and (d); and
■ x. Section 36.382(a).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2018–01648 Filed 1–29–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 151110999–7999–03]

RIN 0648–XE314

Endangered and Threatened Wildlife and Plants: Listing the Oceanic Whitetip Shark as Threatened Under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: In response to a petition by Defenders of Wildlife, we, NMFS, are issuing a final rule to list the oceanic whitetip shark (*Carcharinus lonigmanus*) as threatened under the Endangered Species Act (ESA). We have reviewed the status of the oceanic whitetip shark, including efforts being made to protect the species, and considered public comments submitted on the proposed listing rule as well as new information received since publication of the proposed rule. Based on all of this information, we have determined that the oceanic whitetip shark warrants listing as a threatened species. At this time, we conclude that critical habitat is not determinable because data sufficient to perform the required analyses are lacking; however, we solicit information on habitat features and areas in U.S. waters that may meet the definition of critical habitat for the oceanic whitetip shark.

DATES: This final rule is effective March 1, 2018.

ADDRESSES: Endangered Species Conservation Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Chelsey Young, NMFS, Office of Protected Resources, *chelsey.young@noaa.gov,* (301) 427–8491.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 2015, we received a petition from Defenders of Wildlife to list the oceanic whitetip shark (*Carcharhinus longimanus*) as threatened or endangered under the ESA throughout its entire range, or alternatively, to list two distinct population segments (DPSs) of the oceanic whitetip shark, as described in the petition, as threatened or endangered, and to designate critical habitat. We found that the petitioned action may be warranted for the species; and, on January 12, 2016, we published a positive 90-day finding for the oceanic whitetip shark (81 FR 1376), announcing that the petition presented substantial scientific or commercial information indicating the petitioned action may be warranted range wide, and explaining the basis for the finding. We also announced the initiation of a status review of the species, as required by section 4(b)(3)(a) of the ESA, and requested information to inform the agency's decision on whether the species warranted listing as endangered or threatened under the ESA. On December 29, 2016, we published a proposed rule to list the oceanic whitetip shark as threatened (81 FR 96304). We requested public comments

on the information in the proposed rule and associated status review during a 90-day public comment period, which closed on March 29, 2017. This final rule provides a discussion of the public comments received in response to the proposed rule and our final determination on the petition to list the oceanic whitetip shark under the ESA.

Listing Determination Under the ESA

We are responsible for determining whether species meet the definition of threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a ''species'' under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a ''species'' to include any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife, which interbreeds when mature. The oceanic whitetip shark is a formally recognized species with no taxonomic uncertainty and thus meets the ESA definition of a ''species.''

Section 3 of the ESA defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range and a threatened species as one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened species and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

When we consider whether a species might qualify as threatened under the ESA, we must consider the meaning of the term ''foreseeable future.'' It is appropriate to interpret ''foreseeable future'' as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The foreseeable future considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available regarding the species' response to that threat, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years.

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one or a combination of the following five threat factors: the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts being made by any state or foreign nation to protect the species.

In assessing the extinction risk of the oceanic whitetip shark, we considered demographic risk factors, such as those developed by McElhany *et al.* (2000), to organize and evaluate the forms of risks. The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our previous status reviews (see *http://www.nmfs.noaa.gov/pr/species* for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four demographic viability factors: abundance and trends, population growth rate or productivity, spatial structure and connectivity, and genetic diversity. These viability factors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

Scientific conclusions about the overall risk of extinction faced by the oceanic whitetip shark under present conditions and in the foreseeable future are based on our evaluation of the species' demographic risks and section 4(a)(1) threat factors. Our assessment of overall extinction risk considered the likelihood and contribution of each particular factor, synergies among contributing factors, and the cumulative impact of all demographic risks and threats on the species.

Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect the species. Therefore, prior to making a listing determination, we also assess such protective efforts to determine if they are adequate to mitigate the existing threats.

Summary of Comments

In response to our request for comments on the proposed rule, we received a total of 356 comments. Comments were submitted by multiple organizations and individual members of the public from a minimum of 19 countries (Australia, Brazil, Canada, Costa Rica, Ecuador, Egypt, England, Guatemala, India, Mexico, Netherlands, New Zealand, Norway, Panama, Philippines, South Africa, St. Kitts and Nevis, Sweden, and the United States). Most of the comments were supportive of the proposed listing of the oceanic whitetip shark as threatened. A few commenters argued that the oceanic whitetip should be listed as endangered, and some commenters were opposed to the proposed listing of the oceanic whitetip shark altogether. We have considered all public comments, and we provide responses to all relevant issues raised by comments. We have not responded to comments outside the scope of this rulemaking, such as comments regarding the potential economic impacts of ESA listings, comments suggesting that certain types of activities be covered or excluded in any future regulations pursuant to ESA section 4(d) for threatened species, or comments suggesting the ESA is not the appropriate tool for conserving the oceanic whitetip shark. Summaries of comments received regarding the proposed rule and our responses are provided below.

Comments on Proposed Listing Determination

Comment 1: We received numerous comments that support the proposed listing of the oceanic whitetip shark as a threatened species under the ESA. A large majority of the comments were comprised of general statements expressing support for listing the oceanic whitetip shark as threatened under the ESA and were not accompanied by substantive information or references. Some of the comments were accompanied by information that is consistent with, or cited directly from, our proposed rule or draft status review report, including the observed population declines of the species, its prevalence in the international trade of shark fins, and the inadequacy of existing regulations to protect the species. Many comments also noted the importance of sharks as apex predators and their role in

maintaining the balance of marine ecosystems. We also received two letters of support for our proposed rule to list the oceanic whitetip shark under the ESA that were accompanied by thousands of signatures: one letter had 3,306 signatures and the other had 24,020 signatures.

Response: We acknowledge the numerous comments and the considerable public interest expressed in support of the conservation of the oceanic whitetip shark.

Comment 2: We received several comments that disagreed with our proposed listing determination of threatened for the oceanic whitetip shark, and argued that the species should be listed as endangered instead for a variety of reasons. One commenter noted that the species should be listed as endangered (as opposed to threatened) because the species' stock is ''much lower than accounted for in the finding.'' Another commenter wrote that global warming, pollution (including increasing volumes of trash and plastic) and lack of genetic diversity all contribute to an endangered status. This particular commenter also disagreed that persistence at diminished abundance levels justifies a threatened listing, alleging that we characterized population declines of 70–80 percent as ''reasonable.'' Other commenters stated that while they agreed with us that the oceanic whitetip shark warrants listing under the ESA, they believe the best available scientific and commercial information indicates that the species warrants listing as endangered as opposed to threatened due to inadequate regulatory mechanisms. One commenter provided a substantive discussion of several regulatory mechanisms in the Eastern Pacific that were deemed inadequate (see Comment 11 below for a detailed summary and response). Another commenter asserted that the species is endangered because past regulatory efforts to protect sharks have been unsuccessful in the United States (*e.g.,* Magnuson-Stevens Fishery Conservation and Management Act (MSA), Shark Finning Prohibition Act of 2000, and Shark Conservation Act of 2010). Other commenters noted that if the oceanic whitetip shark is likely going to be endangered in the foreseeable future, we should use a precautionary approach and list it as endangered now. Finally, a few commenters noted that listing the oceanic whitetip as threatened would not suffice to protect the species, and asserted that we can only promulgate take prohibitions for species that are listed as endangered.

Response: We disagree with commenters that the oceanic whitetip shark should be listed as endangered. As explained in the proposed rule, there are several reasons why the oceanic whitetip shark does not meet the definition of an endangered species under the ESA. The oceanic whitetip shark is a globally distributed species that has not undergone any range contraction or experienced population extirpations in any portion of its range despite heavy harvest bycatch. Given that local extirpations are often a precursor to extinction events range wide, we consider this one indication that the species is not presently in danger of extinction. We could also not find any evidence to suggest that the threats of global warming or plastic pollution are having negative population-level effects on this species and the commenter provided no substantive information to support their claim that these are operative threats on the species. With regard to the species' low genetic diversity, we addressed this threat in detail in the status review report and proposed rule. We explained that the Extinction Risk Analysis (ERA) team acknowledged the low genetic diversity of the species and concluded that it did not, in and of itself, necessarily equate to a risk of extinction, but when combined with the low levels of abundance and continued exploitation, it could pose a viable risk in the foreseeable future. In terms of oceanic whitetip shark abundance, we did not receive any information to suggest that the species' abundance is lower than what we accounted for in our status review report and proposed rule. We also never characterized this species' population declines as ''reasonable;'' in fact, the species' historical and ongoing declining trends in abundance is one of the major demographic risks we identified for the oceanic whitetip that led to our proposed determination of threatened for the species. However, based on analyses of fisheries observer data conducted by the ERA team and presented in the status review report (Young *et al.,* 2017), the oceanic whitetip shark is showing stabilizing trends in abundance in a couple of areas, including the Northwest Atlantic and Hawaii. We concluded that these trends are likely attributable to U.S. fisheries management plans and species-specific regulations that have been in place for the oceanic whitetip for several years and will likely help maintain these trends in the near-term. Additionally, with respect to the adequacy of regulatory mechanisms, we concluded that the increase in species-specific regulatory mechanisms that prohibit the species in numerous fisheries throughout its range should help to reduce fisheries-related mortality and slow (but not necessarily halt) population declines to some degree, thus providing a temporal buffer in terms of the species' extinction risk. As such, we cannot conclude that the species is presently in danger of extinction throughout all or a significant portion of its range; rather, we maintain that the species is likely to become endangered throughout all or a significant portion of its range in the foreseeable future, and thus meets the statutory definition of a threatened species under the ESA.

With regard to comments about using a precautionary approach when making a listing determination, we are only able to consider the best available scientific and commercial information to determine whether the species meets the definition of a threatened or endangered species under the ESA. Therefore, we are unable to utilize a precautionary approach and list a species as endangered when it does not meet the statutory definition of an endangered species at the time of listing.

Finally, commenters are incorrect in their statements that only endangered species are afforded protections under the ESA in the form of take prohibitions. While it is true that only endangered species receive automatic protections under section 9 of the ESA at the time of listing, we have the discretion and ability to promulgate 4(d) regulations for threatened species to apply any or all of the same protections for threatened species, should we find them necessary and advisable for the conservation of the species.

Comment 3: In contrast to Comment 2 above, we also received a comment supporting our determination that the oceanic whitetip shark does not qualify as an endangered species. The commenter stated that the information in the proposed rule clearly does not support a conclusion that the species is presently ''on the brink of extinction'' and requested that we provide a more detailed explanation in our final decision as to why the oceanic whitetip shark does not qualify as an endangered species.

Response: Although we disagree with the interpretation of endangered as being equivalent to ''on the brink of extinction,'' we do agree with the commenter regarding our determination that the oceanic whitetip shark is not presently in danger of extinction throughout its range (*i.e.,* endangered).

We explain our final decision regarding the listing status of the oceanic whitetip shark in our response to Comment 2 above and in the *Final Listing Determination* section below.

Comment 4: One commenter asserted that we did not conduct the required analysis to determine that the oceanic whitetip shark is currently threatened. The commenter stated that although we provided a comprehensive summary of the present status of the oceanic whitetip shark, we did not provide an adequate analysis of the expected status of the species at the end of the foreseeable future. In other words, the commenter contends that we did not properly analyze whether, how, when and to what degree the identified threats will affect the species' status by the end of the foreseeable future (*i.e.,* 30 years). The commenter also asserted that our reliance on the Extinction Risk Analysis (ERA) team's assessment is flawed because there were mixed results regarding the species' overall extinction risk (*e.g.,* 20 out of 60 likelihood points were allocated to the ''low risk'' category; 34 out of 60 likelihood points were allocated to the ''moderate risk'' category; and 6 out of 60 likelihood points were allocated to the ''high risk'' category). The commenter concluded that we did not consider the factors relevant to our decision nor make a rational connection between the facts and our determination.

Response: We disagree with the commenter's characterization of our extinction risk analysis. With regard to the ERA team's methods and conclusions, the available data for the oceanic whitetip shark did not allow for a quantitative analysis or model of extinction risk into the foreseeable future. Therefore, the ERA team adopted the ''likelihood point'' (*i.e.,* FEMAT; Forest Ecosystem Management Assessment Team 1993) method for ranking the overall risk of extinction to allow individuals to express uncertainty. As explained in the proposed rule, this method has been used in previous NMFS status reviews (*e.g.,* Pacific salmon, Southern Resident killer whale, Puget Sound rockfish, Pacific herring, and black abalone) to structure the team's thinking and express levels of uncertainty when assigning risk categories. Therefore, while the ERA team distributed their likelihood points among all three risk categories to express some level of uncertainty, more than half of the available likelihood points were allocated to the ''moderate risk'' category. The ERA team's scientific conclusions about the overall risk of extinction faced by the oceanic whitetip shark is based on an evaluation of current demographic risks and identified threats to the species, and how these factors will likely impact the trajectory of the species into the foreseeable future. As noted in the proposed rule, the ERA team determined that due to significant and ongoing threats of overutilization and largely inadequate regulatory mechanisms, current trends in the species' abundance, productivity and genetic diversity place the species on a trajectory towards a high risk of extinction in the foreseeable future. In other words, given the likely continuation of present-day conditions over the next 30 years or so, the oceanic whitetip will more likely than not be at or near a level of abundance, productivity, and/or diversity that places its continued persistence in question, and may be strongly influenced by stochastic or depensatory processes. Therefore, while we were unable to quantify or model the expected condition of the species at the end of the foreseeable future, we thoroughly evaluated the best available scientific information regarding the species' current demographic risks and threats and made rational conclusions regarding the species' trajectory over the next 30 years based on the ERA team's expertise and professional judgement regarding the species, its threats, and fisheries management.

Comments on Distinct Population Segments (DPSs)

We received a few comments suggesting that we identify distinct population segments of the oceanic whitetip shark.

Comment 5: One group of commenters disagreed with the proposed global listing of the oceanic whitetip shark as a threatened species. The commenters asserted that we failed to reach conclusions regarding recent genetic studies discussed in the status review and proposed rule (Ruck 2016 and Camargo *et al.,* 2016), which they argue supports the identification of at least two DPSs. They provided further discussion of theories proposed by Ruck (2016) and Camargo *et al.* (2016) that population structure may reflect thermal barriers and female philopatry. As such, they requested that we re-assess the extinction risk of the species following a thorough analysis of potential distinct population segments (DPSs), specifically the Atlantic and Indo-Pacific populations, because the commenters believe that extinction risk analyses of these individual DPSs may result in a different listing determination. The commenters asserted that ''Even when listing is warranted for the global species, NMFS has a duty to analyze potential DPSs.'' The commenter also stated that conducting an extinction risk analysis at the DPS level (as opposed to the global level) would be ''more meaningful and scientifically relevant for the oceanic whitetip shark's future management, including critical habitat designation and recovery planning strategies.''

Response: We disagree with the commenters regarding our duty to analyze potential DPSs after finding the species warrants listing range-wide. The petition we received from Defenders of Wildlife clearly requested that we list the oceanic whitetip shark as threatened or endangered throughout its range. As an alternative to a global listing, the petition requested that if we found that there are DPSs of oceanic whitetips (specifically Indo-Pacific and Atlantic populations), that those DPSs be listed under the ESA. At the 90-day finding stage, we determined that the petition presented substantial scientific or commercial information indicating listing may be warranted for the oceanic whitetip shark range-wide, and therefore, we initiated the status review on the global population (81 FR 1376, January 12, 2016). We specifically explained in the 90-day finding that if after this review we determined that the species did not warrant listing range-wide, then we would consider whether the populations requested by the petition qualify as DPSs and warrant listing. We concluded that the oceanic whitetip shark warrants listing as a threatened species throughout its range. As such, we have discretion as to whether we should divide a species into DPSs, and the commenter is incorrect that we are required to commit additional agency resources to conduct an analysis and break up the species into the smallest listable entity (*i.e.,* DPSs) despite a warranted listing for the species globally. Nonetheless, we re-reviewed the two available genetic studies for the species (Ruck 2016 and Camargo *et al.,* 2016), particularly in regards to discreteness between Atlantic and Indo-Pacific subpopulations. These studies differ in genetic markers and sampling locations, but neither provides strong evidence for genetic discontinuity. Camargo *et al.* (2016) compared mitochondrial DNA sequences of samples collected in eight locations, including the southeast Atlantic and the southwest Indian Oceans (*i.e.,* on either side of the southern tip of Africa). They concluded there was an absence of genetic structure between the East Atlantic and

Indian Ocean subpopulations. Though the Indian Ocean sample size was small (n=9), it included four haplotypes, all of which were also found in Atlantic Ocean subpopulations. Camargo *et al.* (2016) explained that this genetic connectivity (*i.e.,* the existence of only one genetic stock around the African continent) may be facilitated by the warm Agulhas current, which passes under the Cape of Good Hope of South Africa and may transport oceanic whitetips from the Indian Ocean to the eastern Atlantic. Ruck (2016) compared longer mitochondrial DNA sequences and 11 microsatellite DNA loci of samples collected in seven locations; however, there were no samples from the southeast Atlantic and the southwest Indian Oceans (*i.e.,* the closest sampling locations were Brazil and Arabian Sea). Ruck (2016) found weak but statistically significant differentiation between West Atlantic and Indo-Pacific subpopulations but explained that her study shows genetic evidence for contemporary migration between the West Atlantic and Indo-Pacific as a result of semi-permeable thermal barriers (*i.e.,* the warm Agulhas current). Thus, we compare one study which may lack resolution but demonstrates genetic connectivity between the southeast Atlantic and the southwest Indian Ocean subpopulations (*i.e.,* across the Agulhas current; Camargo *et al.,* 2016) to another that finds weak genetic structure and low-level contemporary migration across great distances (*i.e.,* the West Atlantic and the northern Indian Ocean; Ruck 2016). We conclude that neither study provides unequivocal evidence for genetic discontinuity or marked separation (*i.e.,* discreteness) between Atlantic and Indo-Pacific Ocean subpopulations. Therefore, the best available data do not support the identification of these populations as DPSs.

Overall, given the ambiguous nature of the genetics data, limited information regarding the movements of oceanic whitetip sharks, and our discretion to identify DPSs, we do not find cause nor are we required to break up the global population into DPSs. We also do not agree that breaking the global population up into two DPSs would enhance conservation of the species under the ESA. For a threatened species, we have the discretion to promulgate ESA section 4(d) regulations that can be tailored for specific populations and threats should we find it necessary and advisable for the conservation of the species. Recovery planning can also be tailored for the species in different parts of its range.

Comment 6: Another commenter also urged us to break up the global population into DPSs due to differences in regulatory mechanisms and management, specifically between the Northwest Atlantic and South Atlantic. The commenter argued that while regulatory measures in U.S. fisheries operating in the Northwest Atlantic are adequate for the oceanic whitetip, regulations for other fishing fleets in the South Atlantic (particularly Brazil) are likely inadequate. Therefore, the commenter asserted that oceanic whitetip sharks occurring in U.S. waters of the Northwest Atlantic should be identified as a DPS, such that the Northwest Atlantic population would not qualify as a threatened species.

Response: We disagree with the commenter's interpretation of the DPS Policy and its intent. As noted previously, we have discretion with regard to listing DPSs in the case of the oceanic whitetip shark, and Congress has indicated that the provision to list DPSs should be used sparingly. Furthermore, the DPS Policy (61 FR 4722, February 7, 1996) identifies two specific criteria that populations must meet in order to be listed as a DPS—discreteness and significance; and while management differences may be considered in our analysis, management differences are not a sufficient basis for delineating populations as DPSs. Additionally, in many cases recognition of DPSs can unduly complicate species management rather than further the conservation purposes of the statute. In this case, we could find no overriding conservation benefit to break up the global species into DPSs. Finally, as explained in the status review and proposed rule (Young *et al.,* 2017; 81 FR 96304), despite the stabilizing trend in its current state, the Northwest Atlantic population represents a very small portion of the range of the species and is likely persisting at a diminished abundance, particularly given the common abundance documented historically for the oceanic whitetip in this part of its range. With no clear indication of population recovery to date, we still have some concern for the species in this part of its range. Therefore, given the species warrants listing as threatened throughout its range, we do not find cause to break up the population into smaller units.

Comments on Significant Portion of Its Range

Comment 7: One commenter asserted that the status review and proposed rule failed to analyze whether any particular regions of the oceanic whitetip shark's range qualify as significant portions of the species' range (SPR) under the SPR Policy. The commenter contended that had we conducted analyses of potential SPRs, we may have determined that oceanic whitetip sharks in a particular ocean basin (*e.g.,* Atlantic and Pacific) or regions within an ocean basin (*e.g.,* eastern and western Atlantic) face different levels of extinction risk and would result in a likely change of listing determination for the oceanic whitetip shark.

Response: We disagree with the commenter's interpretation of the SPR Policy (79 FR 37577, July 1, 2014), as well as their statement that we failed to analyze whether there are any portions of the oceanic whitetip shark's range that would qualify as an SPR, which implies we were required to do so. We believe Congress intended that, where the best available information allows the Services to determine a status for the species rangewide, such listing determination should be given conclusive weight. A rangewide determination of status more accurately reflects the species' degree of imperilment, and assigning such status to the species (rather than potentially assigning a different status based on a review of only a portion of the range) best implements the statutory distinction between threatened and endangered species. Maintaining this fundamental distinction is important for ensuring that conservation resources are allocated toward species according to their actual level of risk. We also note that Congress placed the ''all'' language before the ''significant portion of its range'' phrase in the definitions of ''endangered species'' and ''threatened species.'' This suggests that Congress intended that an analysis based on consideration of the entire range should receive primary focus, and thus that the agencies should do a ''significant portion of its range'' analysis as an alternative to a rangewide analysis only if necessary. Under this reading, we should first consider whether listing is appropriate based on a rangewide analysis and proceed to conduct a ''significant portion of its range'' analysis if (and only if) a species does not qualify for listing as either endangered or threatened according to the ''all'' language. We note that this interpretation is also consistent with the 2014 Final Policy on Interpretation of the Phrase ''Significant Portion of its Range'' (79 FR 37578 (July 1, 2014)), which provides that a portion of a species' range can be ''significant'' only if the species is not currently

endangered or threatened throughout all of its range. The current SPR Policy defines ''significant'' as follows: ''A portion of the range of a species is 'significant' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range'' (79 FR 37578, July 1, 2014). For all of these reasons and based on the SPR Policy, because we determined the oceanic whitetip shark is currently threatened throughout all of its range, we did not conduct an additional SPR analysis to determine if a portion of the species' range is significant and whether the species is endangered in that portion.

Comments on Threats to the Species

Comment 8: We received a comment letter that articulated concern for an omission of information regarding various NMFS time/area seasonal closures for pelagic longline (PLL) gear in the United States Exclusive Economic Zone (EEZ) that have been in place for many years along the East Coast. The commenter asserted that these closures have resulted in a reduction of oceanic whitetip shark bycatch, and this information should have been included in the status review report as an example of management that has benefited the species.

Response: We acknowledge that the status review report did not specifically discuss the time/area seasonal closures for PLL gear in the U.S. EEZ along certain sections of the East Coast. We have since incorporated this information into the status review report. However, the commenter did not provide any details or data to show how these particular regulations have reduced oceanic whitetip shark bycatch in particular, and we are not aware of any scientific study or data that demonstrates the impacts of these closures on oceanic whitetip shark abundance. We agree that it's possible these particular regulations may have had a positive effect on reducing bycatch of oceanic whitetip shark in the Northwest Atlantic PLL fishery, particularly given the stabilizing trend shown by the ERA team's analysis of observer data from the fishery (which cover the aforementioned time/area seasonal closures), but there's no way to confirm this assertion based on the available data and information. Overall, as we explained in the status review report and proposed rule, we do agree that regulatory mechanisms in the Northwest Atlantic have likely improved the status of the oceanic whitetip shark in this portion of its range; however, the incorporation of this new information does not alter our overall assessment of the species' extinction risk throughout its global range.

Comment 9: We received a comment letter from the Blue Water Fishermen's Association that disagreed with our conclusion that inadequate regulatory mechanisms are contributing to an increased risk of extinction for the species, and thus, our decision to list the species as threatened. The substance of the comment focused on regulatory mechanisms implemented for U.S. fishing vessels in the Northwest Atlantic, and asserted that these measures adequately reduce bycatch-related mortality and protect the species from fishing pressure, thus rendering the impacts of U.S. fisheries to the oceanic whitetip shark negligible. The commenter also asserted that the relevant Regional Fishery Management Organizations (RFMOs) have taken adequate measures to protect the species globally by implementing measures to prohibit the retention of oceanic whitetip sharks in the fisheries over which they have competence. The commenter concluded that global regulations of both fisheries and trade (including the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES)) are adequate to protect the oceanic whitetip shark, and therefore, the species does not warrant listing under the ESA.

Response: As discussed previously in the response to *Comment 8* above, we agree that regulatory mechanisms implemented in the Northwest Atlantic for the U.S. PLL fishery have likely contributed to the stabilization of the oceanic whitetip shark population in this portion of its range. We also agree that the no-retention measures implemented by the relevant RFMOs will also likely help reduce fisheries-related mortality of the species to some degree, when adequately enforced. Although there is arguably high compliance with, and adequate enforcement of, U.S. fisheries regulations, the oceanic whitetip shark is a highly migratory species and thus a shared resource across the Atlantic Ocean basin. Several other pelagic longline fleets impact the species, many of which have poor compliance with and enforcement of fisheries regulations. As such, U.S. regulatory mechanisms have limited impact on the global stage in that they only provide protections to oceanic whitetip sharks while in U.S. waters. While this does not make U.S. regulations inadequate in terms of their purpose of protecting oceanic whitetip sharks while in U.S. waters, regulations are likely inadequate in other parts of the world to prevent further population declines of oceanic whitetip as a result of overutilization. For example, we explained in the status review report and proposed rule that Brazil, which is the top oceanic whitetip catching country in the Atlantic, has poor enforcement of its fisheries regulations to mitigate the significant fishing pressure on oceanic whitetip sharks in the region. In fact, a recent review paper of legal instruments to manage fisheries in Brazil noted a ''complete disrespect for the regulations'' and showed that fleets continued to land prohibited or size limited species, including the oceanic whitetip shark (Fiedler *et al.,* 2017). This means Brazil is not only non-compliant with their own national regulations that prohibit the landing and retention of oceanic whitetip sharks, but with international management measures as well.

We also disagree that global regulations for fisheries and trade are adequate to control for the threat of overutilization via fishing pressure and the fin trade. For example, across the Pacific Ocean basin, the species has experienced and continues to experience concentrated fishing pressure and associated mortality in its core tropical distribution (Rice *et al.,* 2015; Hall and Roman 2013). We also noted that implementation and enforcement of regulations to protect the species are likely variable across countries. Additionally, the retention-prohibition enacted by the Western and Central Pacific Fisheries Commission is not being strictly adhered to in longline fisheries (Rice *et al.,* 2015) and will not likely decrease mortality from purse seine fisheries (Young *et al.,* 2017). Given the depleted status of oceanic whitetip sharks across the Pacific Ocean basin, less-than-full implementation of management measures will likely undermine benefits to the species. In terms of the shark fin trade, we discussed in the status review and proposed rule several incidents of illegal oceanic whitetip fin confiscations from fishing vessels in violation of RFMO management measures. Additionally, since the listing of oceanic whitetip shark under CITES Appendix II went into effect in 2014 to control for trade, approximately 1,263 kg (2,784 lbs) of oceanic whitetip fins have been confiscated upon entry into Hong Kong because the country of origin did not

include the required CITES permits. This provides evidence that some countries are not adhering to requirements under CITES and oceanic whitetip fins continue to be traded without the proper documentation certifying that the trade is not negatively affecting the species' status. Therefore, we reaffirm our conclusion in the proposed rule (see 81 FR 96320) regarding the adequacy of U.S. regulatory mechanisms in the context of the species' global range.

Comment 10: We received a similar comment from the Hawaii Longline Association (HLA) that emphasized the negligible effect of the Hawaii-based longline fisheries on the global population of the oceanic whitetip shark due to adequate regulatory mechanisms. The commenter stated that Hawaii-based longline fisheries do not engage in finning or targeting of oceanic whitetip sharks, they incidentally catch very few oceanic whitetip sharks relative to foreign fisheries, and almost all incidentally caught individuals are released alive. Specifically, the commenter pointed out that from 2005–2016, the oceanic whitetip shark only comprised 0.16 percent of all species landed in shallow-set and deep-set longline fisheries combined. Additionally, the commenter noted that in recent years, the percentage of oceanic whitetip sharks released alive is high, ranging from 91–96 percent in the shallow-set fishery, and from 78–82 percent in the deep-set fishery. They also noted that Hawaii-based longline fisheries use a variety of practices to reduce potential adverse effects on the species. Finally, the commenter warned of potential unintended conservation consequences that could result from additional regulations placed on the Hawaii-based longline fisheries as a result of a threatened listing of the oceanic whitetip shark. The commenters asserted that the extensive regulatory system that the Hawaii-based longline fisheries are managed under can create a shift in fishing effort to the very species we are trying to protect by foreign fisheries that are much less regulated (if at all).

We received comments from the Western and Central Pacific Regional Fishery Management Council (Council) along the same lines as comments from HLA, noting that the impact of the Hawaii and American Samoa longline fisheries on the oceanic whitetip shark population is likely limited relative to overall impacts occurring throughout the rest of the species' range. The Council emphasized that the combination of state and federal regulations to prohibit shark finning has likely resulted in increased amounts of oceanic whitetip sharks released alive and asserted that the stabilizing CPUE trend for the Hawaii-based PLL fishery might be attributable to the high proportion of oceanic whitetip sharks released alive over the last 15 years. Additionally, the Council noted that the Hawaii and American Samoa fisheries are operating with gear configurations recommended to reduce shark bycatch (*e.g.,* use of circle hooks and non-use of shark lines), which further reduce the fisheries' impact on the status of the oceanic whitetip shark.

Response: We acknowledge the information provided by HLA and the Council regarding the impact of the Hawaii and American Samoa longline fisheries on the global oceanic whitetip shark population and largely agree with their comments. We explained in the proposed rule that although the Hawaii-based PLL fishery currently catches oceanic whitetip sharks as bycatch, the majority of individuals are released alive in this fishery and the number of individuals kept has shown a declining trend. In fact, the comment letter from HLA provided the same exact statistics that we discussed in the proposed rule regarding the percentage of oceanic whitetip sharks released alive in the shallow-set and deep-set fisheries (*i.e.,* 91–96 percent and 78–82 percent, respectively). We agree that due to the extensive regulatory measures the Hawaii and American Samoa longline fisheries operate under, and the large proportion of individuals released alive, these fisheries may be less of a threat to the oceanic whitetip shark when compared to foreign industrial fisheries. However, while we agree that U.S. fisheries are not likely posing a significant threat to the species relative to foreign industrial fisheries, levels of implementation and enforcement of management measures by other fleets are likely variable across the region. As such, and as noted above in a previous comment response, given the depleted state of the oceanic whitetip population and significant level of fishing mortality the species experiences in this part of its range, less-than-full implementation across the Western and Central Pacific Ocean (WCPO) will likely undermine the benefits of any adequately implemented and enforced management measures in U.S. fisheries. Therefore, in addition to the response we gave to *Comment 9* above regarding the adequacy of U.S. regulatory mechanisms in context of the species' global range, we reiterate our conclusion from the proposed rule regarding the status of oceanic whitetip sharks across the Western and Central Pacific region. Given the ongoing impacts to the species from significant fishing pressure across the WCPO as a whole, (with the majority of effort concentrated in the species' core tropical habitat area), including significant declines in CPUE, biomass, and size indices, combined with the species' relatively low-moderate productivity, we conclude that overutilization has been and continues to be an ongoing threat contributing to the extinction risk of the oceanic whitetip shark across the region (see 81 FR 96315).

With regard to unintended conservation consequences resulting from a threatened listing of the oceanic whitetip shark (*i.e.,* a shift in fishing effort for the species by unregulated foreign industrial fisheries), we can only consider the best available scientific and commercial information regarding the biological status of the species when determining whether it meets the definition of threatened or endangered under the ESA. Therefore, we are unable to consider hypothetical ramifications of protective regulations that the commenter believes may result from listing a species. However, it should be noted that any decision to extend protective regulations to the species via a 4(d) regulation that would potentially affect U.S. fisheries will be addressed in a separate rule-making process with opportunity for public comment and input.

Comment 11: We received a comment letter from the Panama Aquatic Resources Authority within the Panama Ministry of the Environment with some new information regarding shark landings in Panama. The commenter explained that sharks are not reported at the species level in fisheries landing reports; therefore, there is no species-specific information regarding the oceanic whitetip shark in catch reports collected by the Authority. The commenter also reaffirmed information reported in the status review report and proposed rule regarding the significant decline in oceanic whitetip shark catches in the eastern Pacific purse seine fishery, which led to the Inter-American Tropical Tuna Commission's (IATTC) resolution on the conservation of the species. The comment then provided landings data for sharks in the Port of Vacamontes, and noted that sharks are caught under various types of licenses and combinations of licenses, which indicates that shark fishing in Panama is a combination of directed and incidental catch by both longliners (bottom and surface) and trawls. The commenter also included information regarding artisanal and industrial

fishing fleets, noting that the oceanic whitetip shark likely has the most interaction with the longline fishery; however, there is no way to corroborate this information with the landings data from the Panama Aquatic Resources Authority. The commenter concluded that although there are no landings data for oceanic whitetip shark in Panama, this does not necessarily mean the species is not caught. Nonetheless, the commenter agreed that the available information on the species' status in the region suggests that the species warrants protection.

Response: We appreciate the information provided to us by the Panama Aquatic Resources Authority regarding shark fishing and landings data from Panamanian waters, and we have incorporated this information into our status review report for the oceanic whitetip shark. However, the information provided was very limited, and, as the commenter points out, species-specific information for oceanic whitetips in Panama is lacking. We agree with the commenter that although there is no species-specific catch or landings data, the oceanic whitetip likely interacts with the industrial longline fishery in these waters. Overall, because of the depleted status of the species in this region, any additional mortality in Panamanian waters due to bycatch in longlines supports our determination that overutilization is an ongoing threat to the species.

Comment 12: We received a report from the organization Fins Attached (Arauz 2017) stating that existing management measures and regulations in the Eastern Pacific (*e.g.,* Resolutions passed by the IATTC and various national laws in Costa Rica) are inadequate for oceanic whitetip sharks. The report gave several examples from Costa Rica where existing regulations are failing to achieve their objectives, including a 5 percent fin-to-body weight ratio, the IATTC's Resolution C–11–10 on the Conservation of Oceanic Whitetip Sharks (which prohibits Members and Cooperating non-Members (CPCs) from retaining or landing any part or whole oceanic white tip carcass in fisheries covered by the Antigua Convention), and Costa Rica's ban on the use of fish aggregating devices (FADs).

Response: We appreciate the additional information provided in the Fins Attached report and have incorporated this information into our status review report for the oceanic whitetip shark. We agree with the commenter that existing regulatory mechanisms in the eastern Pacific are likely inadequate to halt or reverse population declines of the species in this portion of its range. As explained in the status review report and proposed rule, the IATTC's Resolution C–11–10 is not likely adequate to prevent capture and mortality in the main fishery that catches oceanic whitetip sharks in this region (*i.e.,* the tropical tuna purse seine fishery). Therefore, because of the species' depleted status in the eastern Pacific and the ongoing fishing pressure from both purse seine and longline fisheries, we concluded that the retention prohibition for oceanic whitetip sharks in the eastern Pacific is not likely adequate in terms of effectively mitigating for the threat of overutilization in this region. The evidence provided of other inadequate regulations in this region further supports our conclusion that overutilization of oceanic whitetip shark in the Eastern Pacific is an ongoing, unabated threat contributing to the species' threatened status.

Comment 13: We received a comment letter from the Ministry of Foreign Affairs of Saint Kitts and Nevis, confirming that oceanic whitetip sharks are not targeted in the waters of St. Kitts and Nevis.

Response: We acknowledge the letter and information provided by the government of St. Kitts and Nevis. Although it is useful to know that oceanic whitetip sharks are not targeted in the waters of St. Kitts and Nevis, this information does not alter our determination regarding the species' listing status, as the main issue for the oceanic whitetip shark is incidental bycatch-related mortality and not targeted fishing.

Comment 14: We received a comment letter from an international conservation organization that expressed support for the proposed threatened listing for the oceanic whitetip shark, and concern for the species' low genetic diversity and its potential impact on the species' viability in the future. The commenter identified the African cheetah and northern elephant seal as examples of species in which severe genetic and population bottlenecks, respectively, occurred and led to low genetic variation in the seal and physiological impairments (*e.g.,* decreased fecundity, high infant mortality and increased sensitivity to diseases) in the cheetah. The commenter urged us to continue to monitor the oceanic whitetip shark for any change in status, with particular concern for potential population or genetic bottlenecks that may result in increased inbreeding and subsequent impacts on the species' population viability in the future.

Response: We agree with the commenter that the oceanic whitetip shark has relatively low genetic diversity compared to several other circumtropical sharks. As we described in the proposed rule, the oceanic whitetip sharks' relatively low mitochondrial DNA genetic diversity raises potential concern for the future genetic health of the species, particularly in concert with steep global declines in abundance. Because only 5–7 generations of oceanic whitetip sharks have passed since the onset of industrial fishing (and hence, the intense exploitation of the species), the low genetic diversity observed in Ruck (2016) and Camargo *et al.* (2016) likely reflect historical levels, rather than current levels that would reflect the species' significant population declines (Ruck 2016). Thus, we agree with the commenter that genetic bottlenecks may be a cause for concern in the foreseeable future, since a species with already relatively low genetic diversity undergoing significant levels of exploitation may experience increased risk in terms of reduced fitness, evolutionary adaptability, and potential extirpations (Camargo *et al.,* 2016). In terms of monitoring, once a species is listed under the ESA, we are required to conduct 5-year reviews to determine whether there has been any change in the species' status since the final listing rule went into effect. At that time, we can assess whether any new genetic information has become available that would indicate whether the species' extinction risk has increased due to any population or genetic bottlenecks. Additionally, any interested person can petition us to change the species' status, at which time we would evaluate any new information submitted as part of the petition.

Comments Outside the Scope of the Proposed Listing Determination

We received numerous comments regarding actions that fall outside the scope of this rulemaking. Below are brief explanations to note the comments were received and explain why they are not considered relevant to the content of the proposed rule.

Comment 15: We received multiple comments regarding the designation of critical habitat for the oceanic whitetip shark in U.S. waters. One commenter urged NMFS to propose designated critical habitat for the oceanic whitetip shark in waters off the continental U.S., Puerto Rico, the U.S. Virgin Islands, Hawaii and the Pacific Trust Territories to the maximum extent prudent and determinable.

Response: We appreciate the submission of these comments regarding critical habitat. NMFS is required to designate critical habitat at the time of final rule publication, unless we determine that critical habitat is undeterminable at that time. We discuss our determination that critical habitat is not currently determinable for the oceanic whitetip shark in the *Critical Habitat* section below.

Comment 16: We received several comments related to ESA 4(d) rule making, which was discussed in the *Protective Regulations Under Section 4(d) of the ESA* section of the proposed rule. One commenter requested that NMFS not apply the ESA section 9 take prohibitions to licensed Hawaii-based commercial longline fishing vessels, as these prohibitions would not be necessary and advisable for the conservation of the species given that the Hawaii longline fisheries have a negligible impact on the oceanic whitetip shark relative to foreign industrialized fisheries. In contrast, another commenter requested that NMFS use its authority under ESA section 4(d) to extend the section 9(a) take prohibitions, particularly because ''take'' by fisheries was identified as a main threat to the oceanic whitetip shark in the status review and proposed rule, and thus take prohibitions would be necessary and advisable for the conservation of the species.

Response: The comments described above did not provide substantive information to help inform the final listing determination for the oceanic whitetip shark. For threatened species, the take prohibitions under section 9 of the ESA do not automatically apply, as they do for endangered species. Additionally, NMFS is not required to issue a 4(d) rule for threatened species in conjunction with a final ESA listing. We will do so only if we determine it is necessary and advisable for the conservation of the species. Issuance of a 4(d) rule would be done in a separate rulemaking process that would include specific opportunities for public input. As such, the comments above are noted but not responded to further in this final rule.

Summary of Changes From the Proposed Listing Rule

We did not receive, nor did we find, data or references that presented substantial new information to change our proposed listing determination. We did, however, make several revisions to the status review report (Young *et al.,* 2017) to incorporate, as appropriate, relevant information that we received in response to our request for public comments or identified ourselves. Specifically, we updated the status review to include information regarding fisheries data and regulations from two countries that border the eastern Pacific (Costa Rica and Panama), which largely supports our determination that population declines as a result of overutilization and inadequate regulations in this region are contributing to the species' threatened status globally. We also revised the discussion of U.S. regulatory mechanisms in the status review report to include relevant time/area and seasonal closures to longline fishing gear along the East Coast of the United States. In addition, we identified a couple of new publications with relevant information regarding the life history of the oceanic whitetip shark from the Western and Central Pacific and Indian Oceans (D'Alberto *et al.,* 2017 and Varghese *et al.,* 2016, respectively). Specifically, these publications provide new information regarding age, growth and maturity for the species, which we incorporated into the status review report. We also identified a new paper regarding the inadequacy of fisheries regulations in Brazil (Fiedler *et al.,* 2017), which further supports our determination that overutilization and inadequate regulations are ongoing threats to the species in the South Atlantic. Finally, we revised the discussion of the essential fish habitat (EFH) designation for the oceanic whitetip shark in U.S. waters of the Northwest Atlantic, because NMFS amended the designation in this region in 2017. We thoroughly considered the additional information we received and gathered; however, the inclusion of this new information did not alter the outcome of our risk assessment of the species.

Status Review

We appointed a biologist in the Office of Protected Resources Endangered Species Conservation Division to undertake a scientific review of the life history and ecology, distribution, abundance, and threats to the oceanic whitetip shark. Next, we convened a team of biologists and shark experts (the ERA team) to conduct an extinction risk analysis for the species, using the information in the scientific review. The ERA team was comprised of a natural resource management specialist from NMFS Office of Protected Resources, a fishery management specialist from NMFS' Highly Migratory Species Management Division, and four research fishery biologists from NMFS' Southeast, Northeast, Southwest, and Pacific Island Fisheries Science Centers. The ERA team had expertise in shark biology and ecology, population dynamics, highly migratory species management, and stock assessment science. The status review report presents the ERA team's professional judgment of the extinction risk facing the oceanic whitetip shark but makes no recommendation as to the listing status of the species. The final status review report of the oceanic whitetip shark (Young *et al.,* 2017) compiles the best available information on the status of the species as required by the ESA and assesses the current and future extinction risk for the species, focusing primarily on threats related to the five statutory factors set forth in section 4(a)(1) of the ESA. The status review report is available electronically at *http://www.nmfs.noaa.gov/pr/species/fish/oceanic-whitetip-shark.html.*

The status review report was subjected to independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004). The status review report was peer reviewed by five independent specialists selected from the academic and scientific community, with expertise in shark biology, conservation, and management, and specific knowledge of oceanic whitetip sharks. The peer reviewers were asked to evaluate the adequacy, appropriateness, and application of data used in the status review as well as the findings made in the ''Assessment of Extinction Risk'' section of the report. All peer reviewer comments were addressed prior to finalizing the status review report.

We subsequently reviewed the status review report, its cited references, and peer review comments, and believe the status review report, upon which the proposed rule and this final rule are based, provides the best available scientific and commercial information on the oceanic whitetip shark. Much of the information discussed in the proposed rule and below on oceanic whitetip shark biology, distribution, abundance, threats, and extinction risk is attributable to the status review report. However, we have independently applied the statutory provisions of the ESA, including evaluation of the factors set forth in section 4(a)(1)(A)–(E), our regulations regarding listing determinations, and our DPS policy in making this final listing determination.

ESA Section 4(a)(1) Factors Affecting the Oceanic Whitetip Shark

As stated previously and as discussed in the proposed rule (81 FR 96304;

December 29, 2016), we considered whether any one or a combination of the five threat factors specified in section 4(a)(1) of the ESA is contributing to the extinction risk of the oceanic whitetip shark. Several commenters provided additional information related to threats, such as forms of overutilization, including bycatch-related fisheries mortality and the fin trade, as well as inadequate regulatory mechanisms. The information provided was consistent with or reinforced information in the status review report and proposed rule, and thus, did not change our conclusions regarding any of the section 4(a)(1) factors or their interactions. Therefore, we incorporate and affirm herein all information, discussion, and conclusions regarding the factors affecting the oceanic whitetip shark from the final status review report (Young *et al.,* 2017) and the proposed rule (81 FR 96304; December 29, 2016).

Extinction Risk

As discussed previously, the status review evaluated the demographic risks to the oceanic whitetip shark according to four categories—abundance and trends, population growth/productivity, spatial structure/connectivity, and genetic diversity. As a concluding step, after considering all of the available information regarding demographic and other threats to the species, we rated the species' extinction risk according to a qualitative scale (high, moderate, and low risk). Although we did update our status review to incorporate the most recent life history information for the oceanic whitetip from two additional studies regarding age, growth and age of maturity, none of the comments or information we received on the proposed rule changed the outcome of our extinction risk evaluation for the species. As such, our conclusions regarding extinction risk for the oceanic whitetip shark remains the same. Therefore, we incorporate and affirm herein all information, discussion, and conclusions on the extinction risk of the oceanic whitetip shark in the final status review report (Young *et al.,* 2017) and proposed rule (81 FR 96304; December 29, 2016).

Protective Efforts

In addition to regulatory measures (*e.g.,* fishing and finning regulations, sanctuary designations, etc.), we considered other efforts being made to protect the oceanic whitetip shark. We considered whether such protective efforts altered the conclusions of the extinction risk analysis for the species; however, none of the information we received on the proposed rule affected our conclusions regarding conservation efforts to protect the oceanic whitetip. Therefore, we incorporate and affirm herein all information, discussion, and conclusions on the extinction risk of the oceanic whitetip shark in the final status review report (Young *et al.,* 2017) and proposed rule (81 FR 96304; December 29, 2016).

Final Listing Determination

Based on the best available scientific and commercial information, we conclude that the oceanic whitetip shark is not presently in danger of extinction but is likely to become so in the foreseeable future throughout all or a significant portion of its range. While the oceanic whitetip shark was historically one of the most abundant and ubiquitous shark species in warm tropical and sub-tropical seas around the world (Mather and Day 1954, Backus *et al.,* 1956, Strasburg 1958), the best available scientific and commercial information suggests the species has experienced significant historical and ongoing abundance declines in all three ocean basins (*i.e.,* globally) due to overutilization from fishing pressure and inadequate regulatory mechanisms to protect the species. Estimates of abundance decline range from 50–88 percent across the Atlantic Ocean (Northwest Atlantic, Gulf of Mexico, Southwest Atlantic; Baum and Meyers 2004, Cortés 2007, Driggers *et al.,* 2011, Barretto *et al.,* 2015, ICMBio 2014, Santana *et al.,* 2004); 80–96 percent across the Pacific Ocean basin (Hall and Roman 2013, Rice and Harley 2012, Rice *et al.,* 2015, Clark *et al.,* 2012, Brodziak *et al.,* 2013); and variable declines across the Indian Ocean, (IOTC 2015, Yokawa and Semba 2012, Ramos-Cartelle *et al.,* 2012, IOTC 2011, Anderson *et al.,* 2011). Due to the species' preferred vertical and horizontal habitat in the upper-mixed layer of warm, tropical and sub-tropical waters, the oceanic whitetip shark is extremely susceptible to incidental capture in both longline and purse seine fisheries throughout its range (Rice *et al.,* 2015; Cortes *et al.,* 2012, Murua *et al.,* 2012), and thus experiences substantial levels of bycatch-related fishing mortality from these fisheries. Additionally, the oceanic whitetip shark is a preferred species in the international fin market for its large, morphologically distinct fins (CITES 2013, Vannuccini 1999), which incentivizes the retention and/or finning of the species. Although there has been some decline in the shark fin trade in recent years (Dent and Clarke 2015), we anticipate ongoing threats of fishing pressure and related mortality to continue, as the species is still regularly caught as bycatch in global fisheries and incidents of illegal finning and trafficking of oceanic whitetip fins have occurred recently despite CITES protections (Young *et al.,* 2017, AFCD unpublished data). The oceanic whitetip shark is rendered more vulnerable to fishing pressure due its life history characteristics, including relatively slow growth, late age of maturity, and low fecundity due to its presumed biennial reproductive cycle, which limit the species' capacity to recover. Further, the species' low genetic diversity in concert with steep global abundance declines and ongoing threats of overutilization may pose a viable risk to the species in the foreseeable future. Finally, despite the increasing number of regulations for the conservation of the species, which we acknowledge may help to slow population declines to some degree, we determined that existing regulatory mechanisms are largely inadequate for addressing the most important threat of overutilization throughout a large portion of the species' range.

We conclude that the oceanic whitetip shark is not presently in danger of extinction for a number of reasons. First, the species is broadly distributed over a large geographic range and does not seem to have been extirpated in any region, even in areas where there is heavy harvest bycatch and utilization of the species' high-value fins. Given that local extirpations are often a typical precursor to range-wide extinction events, we consider this to be an indication (among others) that the species is not presently in danger of extinction. There also appears to be a potential for relative stability in population sizes 5 to10 years at the post-decline depressed state, as evidenced by the potential stabilization of two populations (*e.g.,* NW Atlantic and Hawaii) at a diminished abundance, which suggests that this species is potentially capable of persisting at a reduced population size. Although these populations represent very small portions of the species' overall range, given that both of these populations are managed under strict fishing regulations in U.S. waters, we anticipate these stabilizing trends to continue in the near-term. We also conclude that the overall reduction of the fin trade and the marked increase in species-specific regulatory mechanisms in numerous fisheries throughout the species' range should help to reduce fisheries-related mortality and slow (but not necessarily halt) population declines to some degree, thus providing a temporal buffer in terms of the species' extinction risk.

Given the foregoing reasons, we cannot conclude that the oceanic whitetip shark is presently in danger of extinction throughout all or a significant portion of its range. Therefore, based on the best available scientific and commercial information, as summarized here, in our proposed rule (81 FR 64110; September 19, 2016), and in the final status review report (Young *et al.,* 2017), and after consideration of protective efforts, we find that the oceanic whitetip shark (*Carcharhinus longimanus*) is not presently in danger of extinction throughout all or a significant portion of its range, but is likely to become so in the foreseeable future (*i.e.,* approximately 30 years). As such, we find that this species meets the definition of a threatened species under the ESA and list it as such.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include the development and implementation of recovery plans (16 U.S.C. 1533(f)); designation of critical habitat, if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); and a requirement that Federal agencies consult with NMFS under section 7 of the ESA to ensure their actions are not likely to jeopardize the species or result in adverse modification or destruction of designated critical habitat (16 U.S.C. 1536). For endangered species, protections also include prohibitions related to ''take'' and trade (16 U.S.C. 1538). Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). These prohibitions do not apply to species listed as threatened unless protective regulations are issued under section 4(d) of the ESA (16 U.S.C. 1533(d)), leaving it to the Secretary's discretion whether, and to what extent, to extend the ESA's prohibitions to the species. Section 4(d) protective regulations may prohibit, with respect to a threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. Recognition of the species' imperiled status through listing may also promote conservation actions by Federal and state agencies, foreign entities, private groups, and individuals.

Identifying Section 7 Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/FWS regulations require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing, or that result in the destruction or adverse modification of proposed critical habitat. Once a species is listed as threatened or endangered, section 7(a)(2) requires Federal agencies to ensure that any actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of the species. If critical habitat is designated, section 7(a)(2) also requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. Our section 7 regulations require the responsible Federal agency to initiate formal consultation if a Federal action may affect a listed species or its critical habitat (50 CFR 402.14(a)). Examples of Federal actions that may affect the oceanic whitetip shark include, but are not limited to: Alternative energy projects, discharge of pollution from point sources, non-point source pollution, contaminated waste and plastic disposal, dredging, pile-driving, development of water quality standards, vessel traffic, military activities, and fisheries management practices.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed if such areas are determined to be essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(a) of the ESA requires that, to the extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Designation of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat.

In our proposal to list the oceanic whitetip shark, we requested information on the identification of specific features and areas in U.S. waters that may meet the definition of critical habitat for the oceanic whitetip shark (81 FR 96326; December 29, 2016). We have reviewed the comments provided and the best available scientific information. We conclude that critical habitat is not determinable at this time for the following reasons: (1) Sufficient information is not currently available to assess the impacts of designation; and (2) sufficient information is not currently available regarding the physical and biological features essential to conservation. We will continue to evaluate potential critical habitat for the oceanic whitetip shark, and we intend to consider critical habitat for this species in a separate action.

ESA Section 9 Take Prohibitions

Because we are listing the oceanic whitetip shark as threatened, the prohibitions under section 9 of the ESA will not automatically apply to this species. As described below, ESA section 4(d) leaves it to the Secretary's discretion whether, and to what extent, to extend the section 9(a) prohibitions to threatened species, and authorizes us to issue regulations that are deemed necessary and advisable to provide for the conservation of the species.

Protective Regulations Under Section 4(d) of the ESA

As stated above, NMFS has flexibility under section 4(d) to tailor protective regulations based on the needs of and threats to the species. Section 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. We are not proposing such regulations at this time, but may consider potential protective regulations pursuant to section 4(d) for the oceanic whitetip in a future rulemaking.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing a minimum peer review standard. We solicited peer review comments on the draft status review report from five scientists with expertise on sharks in general and specific knowledge regarding the oceanic whitetip in particular. We received and reviewed comments from these scientists, and, prior to publication of the proposed rule, their comments were incorporated into the draft status review report (Young *et al.,* 2016), which was then made available for public comment. Peer reviewer comments on the status review are available at *http://www.cio.noaa.gov/services_programs/prplans/ID345.html.*

References

A complete list of the references used is available upon request (see **ADDRESSES**).

Information Solicited

We request interested persons to submit relevant information related to the identification of critical habitat and essential physical or biological features for this species, as well as economic or other relevant impacts of designation of critical habitat for the oceanic whitetip shark. Details about the types of information we are seeking can be found in the proposed rule (81 FR 96327; December 29, 2016). We solicit information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party as soon as possible but no later than April 2, 2018 (see **ADDRESSES**).

Classification

National Environmental Policy Act

Section 4(b)(1)(A) of the ESA restricts the information that may be considered when assessing species for listing and sets the basis upon which listing determinations must be made. Based on the requirements in section 4(b)(1)(A) of the ESA and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F. 2d 829 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA).

Executive Order 12866, Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866.

Paperwork Reduction Act

This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this final rule does not have significant federalism effects and that a federalism assessment is not required.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Transportation.

Dated: January 24, 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 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) by adding an entry for ''Shark, oceanic whitetip'' under ''Fishes'' in alphabetical order, by common name, to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
FISHES					
*	*	*	*	*	*
Shark, oceanic whitetip.	*Carcharhinuss longimanus.*	Entire species	83 FR [Insert **Federal Register** page where the document begins], January 30, 2018.	NA	NA
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2018–01682 Filed 1–29–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170828822–70999–02]

RIN 0648–XF669

Fisheries of the Northeastern United States; Summer Flounder, Scup, Black Sea Bass Fisheries; 2018 and Projected 2019 Scup Specifications and Announcement of Final 2018 Summer Flounder and Black Sea Bass Specifications; Correction

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

ACTION: Final rule; correction.

SUMMARY: On December 22, 2017, NMFS issued final specifications for scup, summer flounder, and black sea bass for 2018. That document inadvertently failed to apply a pound-for-pound overage deduction to the 2018 scup summer period quota due to overages incurred in 2017. Additionally, the Commonwealth of Massachusetts received a late-season summer flounder transfer applicable to the 2017 fishing year that adjusts its final 2018 state summer flounder quota. This document corrects the final 2018 specifications and informs the public of these adjustments.

DATES: Effective January 30, 2018, through December 31, 2018.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA), are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281–9244.

SUPPLEMENTARY INFORMATION:

Need for Correction

The final 2018 specifcations for scup, summer flounder, and black sea bass published on December 22, 2017 (82 FR 60682). Following its publication, we became aware of two adjustments that need to be made that pertain to the scup and summer flounder commercial fishery quotas.

Adjustment to the Scup Summer Period Quota

Although the 2017 scup annual catch limit (ACL) was not exceeded, landings during the summer commercial quota period exceeded the 2017 summer period quota by 46,753 lb (21,206 kg). The regulations at § 648.123(a)(2)(ii) require any landings in excess of the summer period quota be deducted, pound for pound, from the summer period quota for the following year. As a result, this action adjusts the final 2018 scup summer period quota from 9,340,986 lb (4,237 mt) to 9,294,233 lb (4,216 mt) to account for the 2017 landings overage. Because the overall 2017 ACL was not exceeded, this action does not adjust the final 2018 ACL published on December 22, 2017.

Adjustment to the 2018 Summer Flounder Quota for Massachusetts

This action corrects the state quota allocated to Massachusetts by accounting for a transfer received in late December 2017. As a result of this transfer, Massachusetts received an additional 3,585 lb (1,626 kg) applied towards its 2017 quota. This results in an overage reduction from 37,816 lb (17,153 kg) to 34,231 lb (15,527 kg), which results in a revised 2018 quota of 404,742 lb (183,588 kg).

Corrections

On page 60683 of the **Federal Register** published on December 22, 2017, Table 2 is corrected to read as follows:

TABLE 2—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2018 BY QUOTA PERIOD

Quota period	2018 Initial quota		
	Percent share	lb	mt
Winter I	45.11	10,820,000	4,908
Summer	38.95	9,294,233	4,216
Winter II	15.94	3,822,816	1,734
Total	100.0	23,937,049	10,858

Note: Metric tons are as converted from pounds and may not necessarily total due to rounding.

Additionally, on page 60684, Table 6 is corrected to read as follows:

TABLE 6—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER QUOTAS FOR 2018

State	FMP percent share	2018 Initial quota		2018 Adjusted quota (ACL overage)		Overages through October 31, 2017		Final adjusted 2018 quota, less overages	
		lb	kg	lb	kg	lb	kg	lb	kg
Maine	0.04756	3,152	1,430	3,061	1,388	0	0	3,061	1,388
New Hampshire	0.00046	30	14	30	13	0	0	30	13
Massachusetts	6.82046	451,998	205,023	438,973	199,115	34,231	15,527	404,742	183,588
Rhode Island	15.68298	1,039,326	471,430	1,009,375	457,845	13,002	5,898	996,373	451,947
Connecticut	2.25708	149,579	67,848	145,268	65,893	0	0	145,268	65,893
New York	7.64699	506,773	229,868	492,169	223,244	0	0	492,169	223,244
New Jersey	16.72499	1,108,381	502,753	1,076,440	488,265	0	0	1,076,440	488,265
Delaware	0.01779	1,179	535	1,145	519	49,638	22,515	−48,493	−21,996
Maryland	2.0391	135,133	61,295	131,239	59,529	0	0	131,239	59,529
Virginia	21.31676	1,412,682	640,782	1,371,972	622,316	0	0	1,371,972	622,316
North Carolina	27.44584	1,818,862	825,022	1,766,447	801,247	0	0	1,766,447	801,247

TABLE 6—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER QUOTAS FOR 2018—Continued

State	FMP percent share	2018 Initial quota		2018 Adjusted quota (ACL overage)		Overages through October 31, 2017		Final adjusted 2018 quota, less overages	
		lb	kg	lb	kg	lb	kg	lb	kg
Total	100	6,627,096	3,006,000	6,436,120	2,919,375	.....	.....	6,387,743	2,897,431

Notes: Kilograms are as converted from pounds and may not necessarily add due to rounding. Total quota is the sum for all states with an allocation. A state with a negative number has a 2018 allocation of zero (0). Total adjusted 2018 quota, less overages, does not include negative allocations (i.e., Delaware's overage).

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

Dated: January 24, 2018.

Samuel D. Rauch, III,

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

[FR Doc. 2018–01672 Filed 1–29–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 20
Tuesday, January 30, 2018

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1116; Product Identifier 2016–NE–32–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2017–20–06, which applies to certain Honeywell International Inc. (Honeywell) AS907–1–1A turbofan engines. AD 2017–20–06 requires a one-time inspection of the second stage low-pressure turbine (LPT2) blades and, if the blades fail the inspection, the replacement of the blades with a part eligible for installation. Since we issued AD 2017–20–06, we determined the need to clarify the Applicability and Compliance sections of AD 2017–20–06. This proposed AD would continue to require a one-time inspection of the LPT2 blades and, if the blades fail the inspection, the replacement of the blades with a part eligible for installation. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by March 16, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Honeywell International Inc., 111 S 34th Street, Phoenix, AZ 85034–2802; phone: 800–601–3099; internet: *https://myaerospace.honeywell.com/wps/portal.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1116; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–1116; Product Identifier 2016–NE–32–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued AD 2017–20–06, Amendment 39–19063 (82 FR 46379, October 5, 2017), (''AD 2017–20–06''), for certain Honeywell International Inc. (Honeywell) AS907–1–1A turbofan engines. AD 2017–20–06 requires a one-time inspection of the LPT2 blades and, if the blades fail the inspection, the replacement of the blades with a part eligible for installation. AD 2017–20–06 resulted from reports of loss of power due to failure of the LPT2 blade. We issued AD 2017–20–06 to prevent failure of the LPT2 blades caused by excessive blade tip shroud wear, failure of one or more new production engines with the same time-in-service, and loss of the airplane.

Actions Since AD 2017–20–06 Was Issued

Since we issued AD 2017–20–06, we determined the need to clarify the Applicability and Compliance sections of that AD. We received comments from operators and maintenance facilities indicating that these sections of the AD could have been misinterpreted to mean that the borescope inspections required by this AD applied to all Honeywell AS907–1–1A turbofan engines with LPT2 rotor blades, part number (P/N) 3035602–1, installed. We revised these sections to clarify that only Honeywell AS907–1–1A turbofan engines with LPT2 rotor blades, P/N 3035602–1, installed, with more than 8,000 hours since new on the effective date of this AD are affected.

Related Service Information Under 1 CFR Part 51

We reviewed Honeywell Service Bulletin (SB) AS907–72–9067, Revision 1, dated March 20, 2017. This SB describes procedures for inspecting the LPT2 blades. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

We reviewed Honeywell SB AS907–72–9067, Revision 0, dated December 12, 2016, which also describes procedures for inspecting the LPT2 blades. We also reviewed the Honeywell

Light Maintenance Manual, AS907–1–1A, 72–00–00, Section 72–05–12, dated May 25, 2016, and Section 72–55–03, dated September 27, 2011, which provide additional guidance for performing borescope inspections.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2017–20–06 to perform a one-time inspection of affected LPT2 blades and, if the blades fail the inspection, replace the blades with a part eligible for installation. This proposed AD would clarify that these requirements apply only to Honeywell AS907–1–1A turbofan engines with LPT2 rotor blades, P/N 3035602–1, installed, with more than 8,000 hours since new on the effective date of this AD.

Costs of Compliance

We estimate that this proposed AD affects 40 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Borescope inspection	10 work-hours × $85 per hour = $850	$0	$850	$34,000
Report results of inspection	1 work-hour × $85 per hour = $85	0	85	3,400

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We estimate that 40 engines will need this replacement.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of the LPT2 blade set	50 work-hours × $85 per hour = $4,250	$50,000	$54,250

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–20–06, Amendment 39–19063 (82 FR 46379, October 5, 2017), and adding the following new AD:

Honeywell International Inc.: Docket No. FAA–2017–1116; Product Identifier 2016–NE–32–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by March 16, 2018.

(b) Affected ADs

This AD replaces AD 2017–20–06, Amendment 39–19063 (82 FR 46379, October 5, 2017).

(c) Applicability

This AD applies to Honeywell International Inc. (Honeywell) AS907–1–1A turbofan engines with second stage low-pressure turbine (LPT2) rotor blades, part number 3035602–1, installed, that have more than 8,000 hours since new on the effective date of this AD.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by reports of loss of power due to failure of the LPT2 blade. We are issuing this AD to prevent failure of the LPT2 blades. The unsafe condition, if not corrected, could result in failure of one or more engines and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Within 200 hours time in service after the effective date of this AD, do the following:

(1) Perform a one-time borescope inspection for wear of the Z gap contact area at the blade tip shroud for each of the 62 LPT2 rotor blades. Use the Accomplishment Instructions, Paragraph 3.B.(1), of Honeywell Service Bulletin (SB) AS907–72–9067, Revision 1, dated March 20, 2017, to do the inspection.

(2) If the measured wear and/or fretting of any Z gap contact area is greater than 0.005 inch, replace the LPT2 rotor assembly with a part eligible for installation before further flight.

(3) Using a borescope, make a clear digital image of the Z gap contact area at the blade tip shroud of the 62 LPT2 rotor blades, and do the following:

(i) Identify the three Z gap contact areas with the greatest amount of wear and/or fretting.

(ii) Record the blade position on the LPT2 rotor assembly and the measured wear of the three Z gap contact areas with the greatest amount of wear and/or fretting.

(iii) Send the results to Honeywell at *engine.reliability@honeywell.com* within 30 days after completing these actions.

(h) Credit for Previous Actions

You may take credit for the actions required by paragraphs (g)(1) and (2) of this AD, if you performed these actions before the effective date of this AD using Honeywell SB AS907–72–9067, Revision 0, dated December 12, 2016.

(i) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, may approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Los Angeles ACO Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD.

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

(k) Related Information

(1) For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

(2) For service information identified in this AD, contact Honeywell International Inc., 111 S 34th Street, Phoenix, AZ 85034–2802; phone: 800–601–3099; internet: *https://myaerospace.honeywell.com/wps/portal.*

Issued in Burlington, Massachusetts, on January 24, 2018.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–01704 Filed 1–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–1035]

RIN 1625–AA00

Special Local Regulation; Atlantic Ocean, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a recurring special local regulation for navigable waters of the Atlantic Ocean, east of Miami Beach, FL beginning at Government Cut Inlet, for the Miami Beach Air and Sea Show. This action is necessary to ensure the safety of the general public, spectators, vessels, and marine environment from potential hazards during aerobatic maneuvers by high-speed, low-flying airplanes and high speed vessels performing during the Miami Beach Air and Sea Show. This proposed rulemaking would prohibit persons and non-participant vessels from entering, transiting, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 1, 2018.

ADDRESSES: You may submit comments on the Federal eRulemaking Portal at *http://www.regulations.gov* using docket number USCG–2017–1035 in the ''Search'' feature. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Mara J. Brown, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305–535–4317, email *Mara.J.Brown@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The city of Miami Beach has informed the Coast Guard it will be hosting the Miami Beach Air and Sea Show annually over one weekend (Saturday and Sunday) during the month of May. The special local regulation proposed for this event would cover all navigable waters of the Atlantic Ocean east of Miami Beach, FL beginning at Government Cut Inlet and continuing north approximately two miles. The regulated area is intended to protect personnel, vessels, and the marine environment from potential hazards during aerobatic maneuvers by high speed, low flying airplanes and high speed vessels during the air show. Over the years, there have been unfortunate instances of aircraft mishaps during performances at various air shows around the world. Occasionally, these incidents result in a wide area of scattered debris in the water that can damage property or cause significant injury or death to the public observing the air shows. The Captain of the Port Miami has determined that a special local regulation is necessary to protect the general public from hazards associated with aerial flight demonstrations.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

This rule would establish a special local regulation over the waters of the Atlantic Ocean east of Miami Beach, FL beginning at Government Cut Inlet and continuing north approximately two miles. The duration of the regulated area is intended to ensure the safety of the aerial flight demonstrations and high speed boat races. Non participant vessels or persons will not be permitted to enter the regulated area without obtaining permission from the Captain of the Port or a designated representative. The Coast Guard will provide a notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. Vessel traffic will be able to safely transit around the regulated area, which would impact a small designated area of the Atlantic Ocean. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you believe your business, organization, or governmental jurisdiction qualifies as a small entity and this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If you believe this rule would affect your small business, organization, or governmental jurisdiction and have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area that would prohibit persons and vessels from transiting the regulated area during the air and sea show. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination will be available once we receive public comment for this rule and will be located in the docket indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety; Navigation (water); Waterways; Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 .U.S.C. 1233

■ 2. Add § 100.725 to read as follows:

§ 100.725 Special Local Regulation: Miami Beach Air and Sea Show; Atlantic Ocean, Miami Beach, FL.

(a) *Location:* The following area is a regulated area located on the Atlantic Ocean in Miami Beach, FL. All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 25°47′52″ N, 080°6′55″ W; thence southwest to Point 2 in position 25°45′40″ N, 080° 7′16″ W; thence northwest to Point 3 in position 25°45′50″ N, 080°07′49″ W; thence north to Point 4 in position 25°47′56″ N,080°07′30″ W; thence back to the origin at Point 1. These coordinates are based on North American Datum 1983. All persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting, anchoring in, or remaining within the regulated area.

(b) Definitions: (1) The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and Local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(2) The term ''Patrol Commander'' means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector Commander to enforce these regulations.

(3) The term ''spectators'' means all persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) *Regulations:* (1) All non-participant vessels or persons are prohibited from entering, transiting, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port or a designated representative.

(2) Persons and vessels desiring to enter, transit, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at (305) 535–4472 or a designated representative via VHF–FM radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will notify the public in advance of the event contained in these regulations by publishing a Notice of Enforcement in the **Federal Register** in advance of the date of the event. In addition, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM channel 16, or provide notice by on-scene designated representatives.

(d) *Enforcement period:* This rule will be enforced annually on a weekend (Saturday and Sunday) during the month of May.

Dated: January 16, 2018.

M.M. Dean,

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

[FR Doc. 2018–01742 Filed 1–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–1095]

RIN 1625—AA11; 1625–AA00

Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the navigational and operational restrictions of the Regulated Navigation

Area (RNA) on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, Illinois and remove the redundant Safety Zone currently in place. The purpose of this amendment is to improve safety and clarify regulations for vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' Aquatic Nuisance Species electric dispersal barrier system (EDBS).

DATES: Comments and related material must be received by the Coast Guard on or before April 30, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2017–1095 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant John Ramos, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2131, email *John.E.Ramos@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
CSSC Chicago Sanitary and Ship Canal
DHS Department of Homeland Security
EDBS Electric Dispersal Barrier System
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
RNA Regulated Navigation Area
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The purpose of this proposed rule is to eliminate a redundant safety zone and remove several requirements from a Regulated Navigation Area that are no longer necessary. There currently exists, in 33 CFR 165.923, certain navigational, environmental, and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' Aquatic Nuisance Species electric dispersal fish barrier. 33 CFR 165.923(a)(1) establishes a safety zone in the CSSC from mile marker 296.1 to mile marker 296.7. Additionally, 33 CFR 165.923(b)(1) establishes a regulated navigation area from mile marker 295.5 to mile marker 297.2. There also exists, in 33 CFR 165.930, a safety zone from mile marker 286.0 to mile marker 333.3 that includes the totality of the safety zone in 33 CFR 165.923(a)(1), rendering it redundant.

In 2013, the U.S. Coast Guard Research and Development Center completed a marine safety risk assessment for the waters of the CSSC in the vicinity of the Aquatic Nuisance Species EDBS near Romeoville, Illinois. The overarching goal of the risk assessment was to determine the adequacy of present risk mitigation strategies and, if necessary, recommend alternatives to the present strategies. The report generated at the conclusion of the risk assessment noted apparent confusion among waterway users regarding the boundaries and requirements for the safety zone and RNA outlined in 33 CFR 165.923. The report also identified certain requirements still in effect which had basis in the existing Rule that have since changed over the period of the rule and may longer currently apply. This Notice of Proposed Rulemaking addresses recommended amendments to the regulations based on the report's conclusions and recommendations.

The proposed amendments are intended to improve safety, reduce confusion and eliminate unnecessary burden to vessels transiting the safety zone and RNA of the CSSC in the vicinity of the EDBS near Romeoville, Illinois. The Coast Guard is issuing this proposed rule under 33 U.S.C. 1231; 46 U.S.C. Chapter 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

III. Discussion of Proposed Rule

The purpose of safety zone delineated in § 165.923(a)(1) is to inhibit the potential transfer of live Silver or Asian carp, viable eggs or gametes into the waterway north of the electric barrier. To serve this purpose, the safety zone requirements outlined in 33 CFR 165.923(a)(2) restrict vessels transiting with non-potable water on board if they intend to release that water in any form within or on the other side of the safety zone. A larger safety zone, described at 33 CFR 165.930(a)(2), also encompasses this same area. That safety zone, however, does not contain regulations prohibiting vessels from transiting the zone if they have any non-potable water onboard and intent to release that water within or beyond the safety zone.

The Coast Guard also proposes to eliminate the CSSC safety zone outlined in 33 CFR 165.923(a). This revision would eliminate redundancy currently existing in regulations because the CSSC is already regulated by the larger safety zone delineated in 33 CFR 165.930(a)(2). The requirements in 33 CFR 165.923(a)(2) for the transit of non-potable water would be preserved, but incorporated into the CSSC's RNA regulations in what is now 33 CFR 165.923(b)(2). Therefore, 33 CFR 165.923(b) will become 33 CFR 165.923(a) with the elimination of the safety zone. The following paragraphs describe additional changes that will be made to the RNA regulations.

The Coast Guard proposes to remove the RNA's bow boat requirement in 33 CFR 165.923(b)(2)(ii)(C). The RNA currently requires that all up-bound and down-bound tows that consist of barges carrying flammable liquid cargoes (Grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) engage the services of a bow boat at all times until the entire tow is clear of the RNA. The original bow boat requirement intended to reduce the possibility of a spark-induced event due to allision between a barge carrying flammable liquid cargo and barges at the Will County Generating Station Coal Wharf (RDB MM 296.0) while the facility conducted coal loading and barge fleeting. At times barge fleets were three-wide (approximately 105 feet), extending into the 160-wide cut, less than 500 feet downstream of Barrier II–A. Since barge loading and fleeting ceased in September 2012, the basis for this requirement no longer exists.

The Coast Guard also proposes to modify the requirement in 33 CFR 165.923(b)(2)(ii)(E) that commercial tows be made up with only wire rope to ensure electrical connectivity between all segments of the tow. The purpose of this requirement is to ensure electrical connectivity between all segments of the tow in order to prevent arcing while transiting the electric barrier and to prevent high contact potentials between vessels in the tow. However, the Coast Guard recognizes that adequate means of securing a tow configuration are not exclusive to the use of wire rope and towboats frequently use high-tensile strength aramid, high-modulus polyethylene, or composite fiber ropes (''soft-lines'') as wing-wires or face-wires, and occasionally as barge lashings. Government observers have seen towboats use a single, wire-rope from barge winch to towboat h-bitt, thus providing adequate electrical connectivity, if sufficiently taut, and contacting bare-metal surfaces. The Coast Guard thus proposes to continue to require that commercial tows transiting the RNA ensure the maintenance of electrical connectivity between all segments of the tow through use of wire rope, but allow use of soft

lines to be used in addition to secure a tow. To account for use of soft-lines, the Coast Guard proposes to eliminate the requirement that a tow exclusively use wire rope, by removing the words ''with only'' from the subsection and allowing an appropriate alternative.

Finally, the Coast Guard proposes to add a requirement to the RNA regulations that all vessels transit the RNA at a ''no-wake'' speed. Currently, the RNA does not provide a maximum safe speed for vessels transiting the RNA. Throughout the course of the marine risk assessment, the project team ascertained that the largest marine safety risk is electric shock to a person in the water. Video recording and shore-observer accounts indicate that many, smaller recreational vessels transit the EDBS at a speed that generates significant wake. Also, light-boat transits drag a wake that causes surging of barges moored to the loading facility just north of the pipeline arch. A no-wake zone would reduce this risk not only to persons aboard vessels, but also to persons working ashore alongside the RNA.

The aforementioned changes to the RNA regulations would require a slight reordering of what is now 33 CFR 165.923(b)(2)(ii)(A)–(K). With the removal of the safety zone, these regulations would be found in 33 CFR 165.923(a). The removal of the bow boat requirement in 33 CFR 165.923(b)(2)(ii)(C) would cause the other requirements to move up a letter, becoming the new 33 CFR 165.923(a)(2)(ii)(C)–(J). The ''no wake'' requirement would then become the new 33 CFR 165.923(a)(2)(ii)(K) and the requirements for the transit of non-potable water would be added in a new section, 33 CFR 165.923(a)(2)(ii)(L).

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of the statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

E.O. 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget, and pursuant to OMB guidance it is exempt from the requirements of E.O. 13771. As this proposed rule is anticipated to not be a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

The proposed rule is not a significant regulatory action because this is an updated version with minor changes to an already existing rule. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The proposed revision of the safety zone and RNA will not have a significant economic impact on a substantial number of small entities because the proposed revision imposes minor additional requirements on industry; and provides clarity to preexisting requirements by removing redundancies. The proposed rule, by removing the bow boat requirement due the ceased barge loading and fleeting operations, would in turn reduce regulated costs.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under DHS Management Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves revisions of the safety zone and RNA that provide clarity to preexisting requirements. Normally such actions are categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L60 pertains to establishing, disestablishing, or changing Regulated Navigation Areas and Safety Zones. A preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.923 to read as follows:

§ 165.923 Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Regulated Navigation Area.* (1) The following is a regulated navigation area (RNA): All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.5 and mile marker 297.2.

(2) *Regulations.* (i) The general regulations contained in 33 CFR 165.13 apply.

(ii) Vessels that comply with the following restrictions are permitted to transit the RNA:

(A) Vessels must be greater than 20 feet in length.

(B) Vessels must not be a personal or human powered watercraft (*i.e.,* jet skis, waver runners, kayaks, row boats, etc.).

(C) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITÉ call when approaching the RNA to announce intentions and work out passing arrangements.

(D) Commercial tows transiting the RNA must use wire rope or appropriate alternatives to ensure electrical connectivity between all segments of the tow.

(E) All vessels are prohibited from loitering in the RNA.

(F) Vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA.

(G) Except for law enforcement and emergency response personnel, all personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device.

(H) Vessels may not moor or lay up on the right or left descending banks of the RNA.

(I) Towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

(J) Persons onboard any vessel transiting the RNA in accordance with this rule or otherwise are advised they do so at their own risk.

(K) All vessels transiting the RNA are required to transit at a no wake speed but still maintain bare steerageway.

(L) *Non-potable water.* (i) All vessels are prohibited from transiting the restricted navigation area with any non-potable water on board if they intend to release that water in any form within, or on the other side of the restricted navigation area. Non-potable water includes, but is not limited to, any water taken on board to control or maintain trim, draft, stability, or stresses of the vessel. Likewise, it includes any water taken on board due to free communication between the hull of the vessel and exterior water. Potable water is water treated and stored aboard the vessel that is suitable for human consumption.

(ii) Vessels with non-potable water on board are permitted to transit the restricted navigation area if they have taken steps to prevent the release, in any form, of that water in or on the other side of the restricted navigation area. Alternatively, vessels with non-potable water on board are permitted to transit the restricted navigation area if they have plans to dispose of the water in a biologically sound manner.

(iii) Vessels with non-potable water aboard that intend to discharge on the other side of the restricted navigation area must contact the Coast Guard's Ninth District Commander or his or her designated representatives prior to

transit and obtain permission to transit and discharge. Examples of discharges that may be approved include plans to dispose of the water in a biologically sound manner or demonstrate through testing that the non-potable water does not contain potential live Silver or Asian carp, viable eggs, or gametes.

(iv) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone by vessels with non-potable water on board is prohibited unless authorized by the Coast Guard's Ninth District Commander, his or her designated representatives, or an on-scene representative.

(v) The Captain of the Port, Lake Michigan, may further designate an ''on-scene'' representative. The Captain of the Port, Lake Michigan, or the on-scene representative may be contacted via VHF–FM radio Channel 16 or through the Coast Guard Lake Michigan Command Center at (414) 747–7182.

(b) Definitions. The following definitions apply to this section:

Designated representative means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

On-scene representative means any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Lake Michigan, will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be onshore and will communicate with vessels via VHF–FM radio or loudhailer.

Vessel means every description of watercraft of other artificial contrivance used, or capable or being used, as a means of transportation on water. This definition includes, but is not limited to, barges.

(c) Compliance. All persons and vessels must comply with this section and any additional instructions or orders of the Coast Guard's Ninth District Commander or his or her designated representatives. Any person on board any vessel transiting this RNA in accordance with this rule or otherwise does so at his or her own risk.

(d) Waiver. For any vessel, the Coast Guard's Ninth District Commander or his or her designated representatives may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of vessel and mariner safety.

Dated: January 11, 2018.

J.M. Nunan,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2018–01745 Filed 1–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 171205999–8043–01]

RIN 0648–BH45

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve changes to the Pacific Halibut Catch Sharing Plan (Plan) and codified regulations for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). In addition, NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC. These measures include the sport fishery allocations and management measures for Area 2A. These actions are intended to conserve Pacific halibut, provide angler opportunity where available, and minimize bycatch of overfished groundfish species.

DATES: Comments on the proposed changes to the Plan and the codified regulations, and on the proposed domestic Area 2A Pacific halibut management measures, must be received by March 1, 2018.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2017–0157, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0157,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. Attn: Kathryn Blair.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post 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 is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Docket: This rule is accessible via the internet at the Office of the Federal Register website at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* Background information and documents are available at the NMFS West Coast Region website at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/pacific_halibut_management.html* and at the Council's website at *http://www.pcouncil.org.* Other comments received may be accessed through *Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kathryn Blair, phone: 206–526–6140, fax: 206–526–6736, or email: *kathryn.blair@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Northern Pacific Halibut Act (Halibut Act) of 1982, 16 U.S.C. 773–773k, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention) (16 U.S.C. 773c). It requires the Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c of the Halibut Act also authorizes the regional fishery management councils to develop regulations in addition to, but not in conflict with, regulations of the IPHC to govern the Pacific halibut catch in their corresponding U.S. Convention waters.

Each year between 1988 and 1995, the Pacific Fishery Management Council (Council) developed and NMFS implemented a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters and among non-Indian commercial and sport fisheries in Area 2A. In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). Every year since then, minor revisions to the Plan

have been made to adjust for the changing needs of the fisheries.

For 2018, the Council has recommended minor modifications to sport fisheries to better match the needs of the fishery, and changes to incidental retention in the sablefish fishery. This proposed rule contains some dates for the sport fisheries based on the 2018 Plan as recommended by the Council; however, affected states are holding public meetings to gather input on some final season dates that will be set after the final 2A TAC is determined by the IPHC at its annual meeting January 22–26, 2018. The states will submit final season dates to NMFS after stakeholders have had the availability to comment. These state-determined season dates are included in the final rule because recreational halibut fishing takes place in state and federal waters.

Incidental Halibut Retention in the Sablefish Primary Fishery North of Pt. Chehalis, WA

The Plan provides that incidental halibut retention in the sablefish primary fishery north of Pt. Chehalis, WA, will be allowed when the Washington recreational TAC is 224,110 (101.7 mt) or greater, provided that a minimum of 10,000 lb (4.5 mt) is available. Because the IPHC has not yet set the 2018 Area 2A TAC, it is unclear at this point whether this incidental retention will be allowed in 2018. If it is, the Council will recommend landing restrictions at its March 2018 meeting. Following this meeting, NMFS will publish the restrictions in the **Federal Register.**

Opportunity for Public Comment

Through this proposed rule, NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the resulting proposed domestic fishing regulations by March 1, 2018. The States of Oregon and California will conduct public workshops in February to obtain input on the sport season dates. The State of Washington has already determined season dates following input from the public. Following the proposed rule comment period, NMFS will review public comments and comments from the states, and issue a final rule. Either that final rule or an additional rule will include the IPHC regulations and regulations for the West Coast and Alaska.

Proposed Changes to the Plan

Each year, the Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Wildlife (CDFW), and the tribes with treaty fishing rights for halibut consider whether to pursue changes to the Plan to meet the needs of the fishery. In determining whether changes are needed, the state agencies hold public meetings prior to the Council's annual September meeting. Subsequently, they recommend changes to the Council at its September meeting. In 2017, fishery managers from all three state agencies held public meetings on the Plan prior to the Council's September meeting. At the September 2017 Council meeting, WDFW and ODFW proposed changes to the Plan. NMFS, the tribes, and CDFW did not recommend changes to the Plan or regulations. The Council voted to solicit public input on all of the changes recommended by the state agencies, a few of which were presented in the form of alternatives. WDFW and ODFW subsequently held public workshops on the recommended changes.

At its November 14–20, 2017, meeting the Council considered the results of state-sponsored workshops on the recommended changes to the Plan, along with public input provided at the 2017 September and November Council meetings, and made its final recommendations for modifications to the Plan. NMFS proposes to approve all of the Council's recommended changes to the Plan as further discussed below.

1. In section (e)(3), Incidental catch in the sablefish fishery north of Point Chehalis, modify the sablefish allocation from 70,000 pounds to 50,000 when Area 2A total allowable catch (TAC) is less than 1.5 million pounds. The goal of this change is to limit the amount of unused quota in the incidental sablefish fishery while providing more opportunity to the Washington recreational sector. Remove the requirement that the Area 2A TAC be at least 900,000 pounds in order for incidental catch in the sablefish fishery to be allowed, as this requirement is inconsistent with the current allocation structure in the Plan.

2. In sections (f)(1)(i–iii), Washington sport fisheries, modify the language used in setting open days, specifically: ''seasons will open in early May and may be open up to two days per week and may include one weekday and one weekend day. Season structure may include periodic closures to assess the remaining quota for the subarea.'' This change provides flexibility in setting open fishing days.

3. In section (f)(1)(iv), Columbia River subarea, modify the open days to Thursday, Friday, and Sunday, to allow for the season to extend further into the summer.

These changes are explained in more detail in materials submitted to the Council at its September and November meetings, available at *https://www.pcouncil.org/council-operations/council-meetings/past-meetings/*. NMFS proposes to approve the Council's recommendations and to implement the changes described above. A version of the Plan including these changes can be found at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/pacific_halibut_management.html.*

Proposed Changes to the Regulations

NMFS proposes to make the following change to its codified regulations to the halibut fishery: in § 300.63, at the description of the allocation structure of the incidental halibut catch in the sablefish primary fishery, paragraph (b)(3), remove the 900,000 lb Area 2A TAC threshold. Changes to the allocation structure in the Catch Sharing Plan have made this threshold inaccurate, and the sablefish allocation is based solely on a Washington recreational TAC of 214,110 lbs (97.1 mt) or greater. This change to the regulations is consistent with the proposed change to the Plan described above.

Subarea Allocations

Prior to 2013, NMFS used the total allowable catch (TAC) recommended by IPHC staff at the IPHC's interim meeting to calculate the Area 2A subarea allocations in its proposed rule. Beginning in 2013, the IPHC staff discontinued its prior practice of making a single catch limit recommendation at the interim meeting. Instead, the IPHC staff presented a range of total constant exploitation yield (TCEY) and fishery constant exploitation yield (FCEY) amounts. The goal of shifting from a single point estimate to a range, as stated by the IPHC, is to provide a more ''transparent delineation between scientific results and management/policy decision, ultimately enabling a better understanding of the risks associated with different fishery harvest options.'' The TCEY is a biologically-determined level for total removals from each regulatory area calculated by applying a fixed harvest rate to the estimate of exploitable biomass in that area, determined from the annual stock assessment. The TCEY is higher than the TAC, as the TCEY includes amounts of halibut taken as bycatch in the groundfish fishery and wastage.

At its interim meeting, the IPHC presented a decision table with 13 alternative harvest strategies and

resulting TCEYs. This is a greater number of alternatives on a finer scale than has been presented in previous years, thus for purposes of informing the public's consideration of this proposed rule, we describe the ends of the range under consideration and a mid-point based on historic harvest policy. The coast-wide TCEYs presented at the interim meeting range from 10 to 60 million pounds, with a finer grid presented between 20 and 40 million pounds, and a reference spawning potential ratio (SPR) value of 46% that would translate into a coast-wide TCEY of 31 million pounds. The reference value is consistent with the current harvest policy and, historically, IPHC staff advice.

The purpose of the following discussion is to inform the public's consideration of this proposed rule. However, the IPHC may choose an Area 2A TCEY that is different from any of the numbers discussed here, and is outside the range considered at its November 2017 interim meeting. The determination of the TCEY level is not prescribed in regulation, rather the commissioners make TCEY decisions based on the scientific and stock assessment information combined with input from advisory bodies and the public.

We assume for purpose of this discussion that the Commission will use the 1.9 percent TCEY distribution it used in 2017 to determine the amount of the 2018 coastwide TCEY for Area 2A, however, the Commission may depart from this practice. If the Commission were to adopt the SPR harvest rate reference value corresponding to a coast-wide TCEY of 31 million pounds, the 2018 Area 2A TCEY would be 0.59 million pounds following this assumption. Final adopted area allocations may be greater or less than reference values presented at interim meetings. For comparison, the 2017 Area 2A Reference SPR (46%) value put forth at the interim meeting resulted in an Area 2A TCEY of 0.96 million pounds, while the final value (SPR of 40%) adopted at the IPHC annual meeting resulted in an Area 2A TCEY of 1.47 million pounds. At the two ends of the range of TCEYs presented to the Commission at its interim meeting, a 2018 coast-wide TCEY of 10 or 20 million pounds would result in an Area 2A TCEY of 0.19 or 0.38 million pounds, respectively, while a TCEY of 40 or 60 million pounds would result in an Area 2A TCEY of 0.76 or 1.14 million pounds, respectively, based on preliminary estimates from the 2017 stock assessment, and past policies and approaches.

Proposed 2018 Sport Fishery Management Measures

NMFS also proposes sport fishery management measures, including season dates and bag limits that are necessary to implement the Plan in 2018. The annual domestic management measures are published each year through a final rule. For the 2017 fishing season, the final rule for the commercial fisheries was published on March 7, 2017 (82 FR 12730) along with the IPHC regulations, and the final rule for Area 2A sport fisheries was published on April 20, 2017 (82 FR 18581). The section numbers below correspond to sections in the March 7 final rule. Where season dates are not indicated, those dates will be provided in the final rule, following consideration of the 2018 TAC and consultation with the states and consideration of public comment. Where subarea allocations are not indicated, that information will be added once the Area 2A TAC is determined and quota distributed according to the Plan. The Plan is published in the **Federal Register** but is not codified in the Code of Federal Regulations.

In section 26 of the annual domestic management measures, ''Sport Fishing for Halibut'' paragraph (8) is proposed to read as follows:

(8) * * *

(a) The quota for the area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N lat., 124°23.70′ W long. north to 48°24.10′ N lat., 124°23.70′ W long., is (subarea allocations will be inserted when final rule publishes).

(i) The fishing seasons are:

(A) Depending on available quota, fishing is open May 11, 13, 25, and 27; June 7, 9, 16, 21, 23, 28, and 30, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. Any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed unless the date is announced on the NMFS hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70′ N lat.) (North Coast subarea), is (subarea allocations will be inserted when final rule publishes).

(i) The fishing seasons are:

(A) Depending on available quota, fishing is open May 11, 13, 25, and 27; June 7, 9, 16, 21, 23, 28, and 30, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. Any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed unless the date is announced on the NMFS hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing with recreational gear in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined in groundfish regulations at 50 CFR 660.70(a).

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N lat.), and Leadbetter Point, WA (46°38.17′ N lat.) (South Coast subarea), is (subarea allocations will be inserted when final rule publishes).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70′ N lat. south to 46°58.00′ N lat. and east of a boundary line approximating the 30 fm depth contour. This area is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates (the Washington South coast, northern nearshore area):

(1) 47°31.70′ N lat, 124°37.03′ W long;
(2) 47°25.67′ N lat, 124°34.79′ W long;
(3) 47°12.82′ N lat, 124°29.12′ W long;
(4) 46°58.00′ N lat, 124°24.24′ W long.

The south coast subarea quota will be allocated as follows: (subarea allocations for the primary and nearshore fisheries will be inserted when final rule publishes). Depending on available quota, the primary fishery season dates are May 11, 13, 25, and 27; June 7, 9, 16, 21, 23, 28, and 30, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. Any fishery opening will be announced on the

NMFS hotline at 800–662–9825. No halibut fishing will be allowed unless the date is announced on the NMFS hotline. The fishing season in the nearshore area commences the Saturday subsequent to the closure of the primary fishery, and continues 7 days per week until (subarea allocations will be inserted when final rule publishes) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Seaward of the boundary line approximating the 30-fm depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360, subpart G.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast established to protect yelloweye rockfish. The South Coast Recreational YRCA is defined at 50 CFR 660.70(d). The Westport Offshore YRCA is defined at 50 CFR 660.70(e).

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N lat.), and Cape Falcon, OR (45°46.00′ N lat.) (Columbia River subarea), is (subarea allocations will be inserted when final rule publishes).

(i) This subarea is divided into an all-depth fishery and a nearshore fishery. The nearshore fishery is allocated 500 pounds of the subarea allocation. The nearshore fishery extends from Leadbetter Point (46°38.17′ N lat., 124°15.88′ W long.) to the Columbia River (46°16.00′ N lat., 124°15.88′ W long.) by connecting the following coordinates in Washington 46°38.17′ N lat., 124°15.88′ W long. 46°16.00′ N lat., 124°15.88′ W long and connecting to the boundary line approximating the 40 fm (73 m) depth contour in Oregon. The nearshore fishery opens May 7, and continues on Monday, Tuesday, and Wednesday each week until the nearshore allocation is taken, or September 30, whichever is earlier. The all-depth fishing season commences on May 3, and continues on Thursday, Friday and Sunday each week until (subarea allocations will be inserted when final rule publishes) are estimated to have been taken and the season is closed by the Commission, or September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed when halibut are on board the vessel, except sablefish, Pacific cod, flatfish species, and lingcod caught north of the Washington-Oregon border during the month of May, when allowed by Pacific Coast groundfish regulations, during days open to the all-depth fishery only.

(iv) Taking, retaining, possessing, or landing halibut on groundfish trips is only allowed in the nearshore area on days not open to all-depth Pacific halibut fisheries.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N lat.) and Humbug Mountain (42°40.50′ N lat.) (Oregon Central Coast subarea), is (subarea allocations will be inserted when final rule publishes).

(i) The fishing seasons are:

(A) The first season (the ''inside 40-fm'' fishery) commences June 1, and continues 7 days a week, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon ''inside 40-fm'' fishery of (subarea allocations will be inserted when final rule publishes), or any in-season revised subquota, is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N lat. and 42°40.50′ N lat. is defined at § 660.71(k).

(B) The second season (spring season), which is for the ''all-depth'' fishery, is open (season dates will be inserted when final rule is published). The allocation to the all-depth fishery is (subarea allocations will be inserted when final rule publishes). If sufficient unharvested quota remains for additional fishing days, the season will re-open. Notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested quota remains, the third season (summer season), which is for the ''all-depth'' fishery, will be open (season dates will be inserted when final rule is published) and will continue until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if sufficient quota remains after the last day of the first scheduled open period. If, after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday and Saturday, beginning (the first back up date will be inserted when final rule publishes) and ending when there is insufficient quota remaining, whichever is earlier. If after September 1, an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday and Saturday, the fishery may re-open every Friday and Saturday, beginning September 7 and 8, and ending October 31. After September 1, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing when the groundfish fishery is restricted by depth, no

groundfish may be taken and retained, possessed or landed, when halibut are on board the vessel, except sablefish, Pacific cod, and flatfish species, when allowed by groundfish regulations, if halibut are onboard the vessel. During days open to all-depth halibut fishing when the groundfish fishery is open to all depths, any groundfish species permitted under the groundfish regulations may be retained, possessed or landed if halibut are on aboard the vessel. During days open to nearshore halibut fishing, flatfish species may be taken and retained seaward of the seasonal groundfish depths restrictions, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined at § 660.70(f).

(f) The quota for landings into ports in the area south of Humbug Mountain, OR (42° 40.50′ N lat.) to the Oregon/California Border (42° 00.00′ N lat.) (Southern Oregon subarea) is (subarea allocations will be inserted when final rule publishes).

(i) The fishing season commences on May 1, and continues 7 days per week until the subquota is taken, or October 31, whichever is earlier.

(ii) The daily bag limit is one halibut per person with no size limit.

(iii) No Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish, Pacific cod, and flatfish species, in areas closed to groundfish, if halibut are on board the vessel.

(g) The quota for landings into ports south of the Oregon/California Border (42°00.00′ N lat.) and along the California coast is (subarea allocations will be inserted when final rule publishes).

(i) The fishing season will be open (season dates will be inserted when final rule is published), or until the subarea quota is estimated to have been taken and the season is closed by the Commission, or October 31, whichever is earlier. NMFS will announce any closure by the Commission on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(ii) The daily bag limit is one halibut of any size per day per person.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Council, the North Pacific Fishery Management Council, and the Secretary. Section 5 of the Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) provides the Secretary with the general responsibility to carry out the Halibut Convention between Canada and the United States for the management of Pacific halibut, including the authority to adopt regulations as may be necessary to carry out the purposes and objectives of the Convention and Halibut Act. This proposed rule is consistent with the Secretary's authority under the Halibut Act.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866. For any rule subject to notice and comment rulemaking, the Regulatory Flexibility Act (RFA) requires Federal agencies to prepare, and make available for public comment, both an initial and final regulatory flexibility analysis (IRFA and FRFA), unless the agency can certify that the proposed and/or final rule would not have a ''significant economic impact on a substantial number of small entities.'' These analyses describe the impact on small businesses, non-profit enterprises, local governments, and other small entities as defined by the RFA (5 U.S.C. 603). This analysis is to inform the agency and the public of the expected economic effects of the alternatives, and aid the agency in considering any significant regulatory alternatives that would accomplish the applicable objectives and minimize the economic impact on affected small entities. The RFA does not require the alternative with the least cost or with the least adverse effect on small entities be chosen as the preferred alternative.

The IRFA must only address the effects of a proposed rule on entities subject to the regulation (*i.e.,* entities to which the rule will directly apply) rather than all entities affected by the regulation, which would include entities to which the rule will indirectly apply.

Part 121 of Title 13, Code of Federal Regulations (CFR), sets forth, by North American Industry Classification System (NAICS) categories, the maximum number of employees or average annual gross receipts a business may have to be considered a small entity for RFA purposes. See 13 CFR 121.201. Under this provision, the U.S. Small Business Administration established criteria for businesses in the fishery sector to qualify as small entities. Standards are expressed either in number of employees, or annual receipts in millions of dollars. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small (13 CFR 121.201).

Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with SBA's Office of Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (80 FR 81194, December 29, 2015). This standard is only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA.

NMFS's small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing is $11 million in annual gross receipts. This standard applies to all businesses classified under North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses. (50 CFR 200.2; 13 CFR 121.201).

Description of the Reasons Why Action by the Agency Is Being Considered

Each year, the states of Washington, Oregon, California, and the treaty tribes that fish for halibut meet with their fishery participants to review halibut management under the Plan. Based on feedback from these meetings and experience from the previous year's fishing season, the states or the tribes may propose changes to the Plan for the upcoming year at the Council's September and November meetings. Proposed changes to the Plan are intended to remedy any problems encountered during the previous year's

management, problems with other fisheries with overlapping management jurisdiction (*i.e.,* Pacific Coast groundfish), or other anticipated problems. For 2018, the Pacific Council has proposed changes to the Plan that affect the recreational (sport) and the incidental sablefish commercial fishery.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The legal authority for this action is The Northern Pacific Halibut Act of 1982 at 16 U.S.C. 773c. Under this Act, the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention between the United States and Canada, and the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) also authorizes the regional fishery management council having authority for the geographic area concerned (the Council) to develop regulations governing the Pacific halibut catch in United States portion of Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission. The Council's main management objective for the Pacific halibut fishery in Area 2A is to manage fisheries to remain within the TAC for Area 2A. Another objective is to allow each commercial, recreational (sport), and tribal fishery to target halibut in the manner that is appropriate to meet the conservation requirements for species that co-occur with Pacific halibut. A third objective is to meet the needs of fishery participants in particular fisheries and fishing areas.

A Description and, Where Feasible, Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

This rule may affect some charterboat operations in Area 2A and participants in the incidental sablefish fishery off the coast of Washington. Previous analyses determined that charterboats and the non-treaty directed commercial fishing vessels are small businesses. *See* 77 FR 5477 (Feb. 3, 2012) and 76 FR 2876 (Jan. 18, 2011).

In 2016, 607 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: The 2A directed commercial fishery (159 licenses) and the incidental fishery in the sablefish primary fishery in Area 2A (8 licenses in 2016); incidental halibut caught in the salmon troll fishery (310 licenses in 2016); and the charterboat fleet (120 licenses in 2016). No vessel may participate in more than one of these three fisheries per year. These license estimates overstate the number of vessels that participate in the fishery. IPHC estimates that 60 vessels participated in the directed commercial fishery, 100 vessels in the incidental commercial (salmon) fishery, and 13 vessels in the incidental commercial (sablefish) fishery. Recent information on charterboat activity is not available, prior analysis indicated that 60 percent of the IPHC charterboat license holders may be affected by these regulations.

Reporting and Recordkeeping Requirements

The proposed changes to the Plan and domestic management measures do not include any new reporting or recordkeeping requirements.

Description and Estimate of Economic Effects on Entities, by Entity Size and Industry

The major effect of halibut management on small entities will be from the internationally set TAC decisions made by the IPHC. That decision is independent from this proposed action. This proposed action only makes minor changes to the Plan to provide increased recreational opportunities under the allocations that result from the TAC. Commercial opportunities may be fewer with the incidental sablefish maximum allocation lowering to 50,000 pounds. However when the maximum of 70,000 pounds has been allocated, attainment greater than 50,000 pounds has not occurred since 2006. There are no large entities involved in the halibut fisheries; therefore, none of these changes will have a disproportionately negative effect on small entities versus large entities. The proposed changes to the plan are considered minor, with minimal economic effects.

An Explanation of the Criteria Used To Evaluate Whether the Rule Would Impose ''Significant'' Economic Effects

The proposed sport and commercial management measures implement the Plan by managing the fisheries to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. These changes were uncontroversial throughout the Council's public process and are considered minor because the timing and level of participation are not expected to change. Washington has estimated that 60,000 pounds are needed for a season day, and the most the Washington recreational fishery will gain from the change to the incidental sablefish allocation is 20,000 pounds. The proposed changes to the plan are not expected to have a significant economic impact on a substantial number of small entities.

An Explanation of the Criteria Used To Evaluate Whether the Rule Would Impose Effects on ''a Substantial Number'' of Small Entities

The entirety of the United States' halibut fishery will be impacted by these changes, all of the entities of which are considered small. However, the effects of the rule would be minimal as described above. As previously mentioned, in 2016 eight vessels were licensed to catch halibut in the sablefish fishery. For 2017, the average number of participants in the Columbia River subarea was 73, with the highest number on the first two days and last day. In Washington subareas, most participation occurred in the first two days of fishing, averaging 8,048 anglers.

A Description of, and an Explanation of the Basis for, Assumptions Used

In the description of the entities affected, estimates of the number of charterboats were based off a 2004 report by the Pacific States Marine Fisheries Commission. This report has not been updated and the number of entities is assumed to be similar.

Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

There are no relevant federal rules that may duplicate, overlap, or conflict with this action.

A Description of any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

The status quo alternative would not achieve the objectives and requirements of the Convention and Halibut Act. And because the effects of the rule would be minimal, there are no other additional significant alternatives that would further minimize the impact of the proposed rule on small entities while achieving the goals and objectives of the Convention and Halibut Act. In addition, these changes were proposed by stakeholders to address the needs of the fisheries, and, as explained above, the proposed changes are not expected to have a significant economic impact on a substantial number of small entities.

A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**).

This proposed rule does not contain a collection of information requirement

subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

There are no projected reporting or recordkeeping requirements associated with this action.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Section 302(b)(5) of the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. Government formally recognizes that the 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

A consultation for the 2018–2022 Area 2A Pacific Halibut Catch Sharing Plan will be concluded at the time the final rule.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

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

Dated: January 25, 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 300, subpart E, is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.63, revise paragraph (b)(3) introductory text to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in area 2A.

* * * * *

(b) * * *

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the sablefish primary fishery north of 46°53.30′ N lat, (Pt. Chehalis, Washington), which is regulated under 50 CFR 660.231. This fishing opportunity is only available in years in which the Washington recreational TAC is 214, 110 lb (97.1 mt) or greater, provided that a minimum of 10,000 lb (4.5 mt) is available to the sablefish fishery. Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register**. These restrictions will be designed to ensure the halibut harvest is incidental to the sablefish harvest and will be based on the amounts of halibut and sablefish available to this fishery, and other pertinent factors. The restrictions may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings.

* * * * *

[FR Doc. 2018–01772 Filed 1–29–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 83, No. 20
Tuesday, January 30, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 24, 2018.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW, Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by March 1, 2018. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Water Use Surveys.
OMB Control Number: 0535–NEW.
Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production, value, and disposition, and resource use. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . . and shall distribute them among agriculturists.''
Need and Use of the Information: The Water Use Survey program will collect information on water usage for North Carolina agricultural operations that likely use between 10,000 and 1,000,000 gallons per day. For operations that are unable to provide water use data, an estimation guide is included in the questionnaire that the respondents can use to estimate their water usage based on their agricultural production data. The program will help the North Carolina Department of Agriculture and Consumer Services and North Carolina Department of Environmental Quality fulfill requirements of North Carolina state legislation enacted in 2008. Collecting data less frequently would prevent the agriculture industry from being kept abreast of water use changes for North Carolina.
Description of Respondents: Farms; Businesses or other for-profit.
Number of Respondents: 3,330.
Frequency of Responses: Reporting: Annually.
Total Burden Hours: 1,614.

National Agricultural Statistics Service

Title: Wine Grape Inventory Surveys.
OMB Control Number: 0535–NEW.
Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production, value, and disposition. Limited data exists specifically for wine grapes. Currently, only Oregon and Washington publish annual statistics for wine grapes that are funded by their State Departments of Agriculture. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . . and shall distribute them among agriculturists.''
Need and Use of the Information: The Wine Grape Inventory survey program will collect information on number of producers, age of vines, acreage by wine grape variety, and number of vines by wine grape variety in select States. The program will provide data needed by the State Departments of Agriculture, other government agencies, and producer groups to track the growth and production practice information of the wine grape industry. Collecting data less frequently would prevent the agriculture industry from being kept abreast of changes at the State and variety level.
Description of Respondents: Farms; Businesses or other for-profit.
Number of Respondents: 1,330.
Frequency of Responses: Reporting: Annually.
Total Burden Hours: 482.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. 2018–01667 Filed 1–29–18; 8:45 am]
BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, Idaho; Lower Valley Energy Crow Creek Pipeline Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This notice advises the public that the USDA Forest Service, Caribou-Targhee National Forest, Montpelier Ranger District, is gathering information

necessary to prepare an environmental impact statement (EIS) in connection with Lower Valley Energy's request to construct an eight-inch diameter, low pressure pipeline in a north-northeasterly direction between Montpelier, Idaho and Afton, Wyoming.

DATES: Comments concerning the scope of the analysis must be received by March 1, 2018. The draft EIS is expected to be released in spring 2018, and the final EIS is expected in summer 2018.

ADDRESSES: Send written comments to Montpelier Ranger District, 322 N. 4th Street, Montpelier, ID 83254. Comments may also be sent via email to *comments-intermtn-caribou-targhee-montpelier@fs.fed.us* or via facsimile to (208) 847–3426.

FOR FURTHER INFORMATION CONTACT: Bryan Fuell, Acting District Ranger, Montpelier Ranger District, (208) 547–1101 or Jessica Taylor, National Environmental Policy Act (NEPA) Coordinator, Caribou-Targhee National Forest (208) 557–5837. A public scoping letter with more details is posted on the Forest website: *https://www.fs.usda.gov/projects/ctnf/landmanagement/projects.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for this project is to provide natural gas to the Afton/Star Valley, Wyoming area by pipeline. Lower Valley Energy currently provides natural gas to the Afton/Star Valley area by trucking liquefied natural gas to a central distribution facility located in Star Valley. As the demand for natural gas for residences and commercial buildings continues to increase, the shipping of gas by truck becomes costlier and less efficient. Increased shipping by truck also elevates a public safety issue because the level of truck traffic carrying hazardous chemicals on public highways increases. Shortages occur each winter because truck shipments are stalled by the inclement weather. Construction of the proposed pipeline would eliminate the need for Lower Valley Energy to ship overland and would contain all natural gas conveyance to a single pipeline.

Proposed Action

The proposed routing of an eight-inch diameter, low pressure pipeline parallels existing road corridors through Forest Service ownership where feasible. In several locations, an existing road is the dividing feature between Inventoried Roadless Areas (IRAs). In these areas, the pipeline will be constructed within the roadway corridor, however; due to potential visual, noise and other impacts, IRAs adjacent to the pipeline construction may be impacted. In other locations, terrain limitations, stream environments, or practicality (shorter route, less disturbance) results in deviating from the road corridor and, in some of these cases, results in construction within an IRA. The total pipeline length is approximately 48 miles, with approximately 20 miles occuring on NFS lands (approximately 119 acres), and 40 acres of disturbance occuring within IRAs.

The project would directly impact the Meade Peak, Red Mountain, Telephone Draw and Hell Hole IRAs, and would be immediately adjacent to, and would thereby have some impact to, the Gannett Spring Creek and Sage Creek IRAs.

No road building is proposed within IRAs. Within the IRAs, only activities needed to construct the pipeline would occur and the construction areas would be fully reclaimed to original contours and with native vegetation. Project activities would include digging a trench, hauling pipe, welding pipe, and burying the pipe as well as cleanup and reclamation. Alignment markers would be installed at inter-visible distances along the entire route. While the project would have impacts to General Forest, Rangeland and Grassland (GFRG) and Backcountry Restoration (BCR) IRA themes, only incidental timber cutting would occur in BCR themes because the vegetation communities are primarily sagebrush and mountain brush.

The proposed action would also result in a plan amendment to make the project consistent with the Caribou Revised Forest Plan. The project would result in the establishment of a utility corridor for those portions of the pipeline that are outside existing corridors. The plan amendment would change the management prescription of approximately 119 acres to Management Prescription 8.1, Concentrated Development Areas.

The 2012 Planning Rule, as amended, requires identification in the initial notice of the amendment of the substantive provisions that are likely to be directly related to the amendment. Based on the proposed amendment for the Lower Valley Energy Crow Creek Pipeline and requirements of the planning rule, the following substantive requirements of the 36 CFR 219 planning regulations would likely be directly related to the proposed amendment:

§ 219.10(a)(1) Aesthetic values, air quality, cultural and heritage resources, ecosystem services, fish and wildlife species, forage, geologic features, grazing and rangelands, habitat and habitat connectivity, recreation settings and opportunities, riparian areas, scenery, soil, surface and subsurface water quality, timber, trails, vegetation, viewsheds, wilderness, and other relevant resources and uses;

§ 219.10(a)(4) Appropriate placement of and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors; and

§ 219.10(a)(7) Reasonably foreseeable risks to ecological, social, and economic sustainability.

Possible Alternatives

Two alternative routes to the proposed route have been developed to date, although other alternatives may be considered that could provide mitigation of potential impacts. At a minimum, the ''no action alternative'' will be fully evaluated and analyzed along with the proposed action.

Lead and Cooperating Agencies

The Forest Service is the lead agency; there are no cooperating agencies.

Responsible Official

The Forest Supervisor of the Caribou-Targhee National Forest is the responsible official.

Nature of Decision To Be Made

The decisions to be made include whether to implement the proposed action, as designed; whether there are other alternatives capable of satisfying the purpose and need; whether any mitigation measures or monitoring is required to implement the proposed action or alternatives; and whether or not to approve the plan amendment. These decisions would be made in the record of decision, which would be issued following the publication of a final EIS and completion of the Forest Service objection process (36 CFR part 218, subparts A and B and 36 CFR part 219).

Preliminary Issues

The Forest Service will identify issues based on internal and external scoping comments and will analyze potential effects in a draft EIS. Due to the number of IRAs between Montpelier and the terminus of the pipeline, avoiding impacts to IRAs is not practical. Up to six IRAs could be impacted either directly or by activities occurring

adjacent to the IRA. The project would directly impact the Meade Peak, Red Mountain, Telephone Draw and Hell Hole IRAs, and would be immediately adjacent to, and would thereby have some impact to, the Gannett Spring Creek and Sage Creek IRAs. The portions of IRAs that could be impacted include GFRG and BCR management classifications (36 CFR part 294).

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS. In addition to this notice of intent, a legal notice will be published in the *Idaho State Journal,* newspaper of record, and the *Star Valley Independent* to ensure wide distribution of this notice.

The purpose of this comment period is to provide an opportunity for the public to provide early and meaningful participation on a proposed action prior to a decision being made by the Responsible Official. Per 36 CFR 218 and 219, only those who provide specific, written comments regarding the proposed project or activity will be eligible to file an objection. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

An additional opportunity for public participation will occur during the public comment period on the draft EIS, which will be initiated by the publication of a notice of availability of the draft EIS in the **Federal Register**.

Dated: January 10, 2018.

Chris French,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–01736 Filed 1–29–18; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that planning meetings of the South Dakota Advisory Committee to the Commission will convene at 2:00 p.m. (MST) on Wednesday, February 7, 2018 via teleconference. The purpose of the meeting is to review and possibly vote on advisory memorandum culminating from the subtle racism briefing in March 2017.

DATES: Wednesday, February 7, 2018, at 2:00 p.m. (MST).

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number for Both Meetings: 1–888–267–6301, Conference ID: 8658344.

TDD: Dial Federal Relay Service 1–800–877–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: David Mussatt, DFO, *dmussatt@usccr.gov,* 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–888–267–6301; Conference ID: 8658344. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–877–8339 and provide the FRS operator with Conference Call Toll-Free Number: 1–888–267–6301; Conference ID: 8658344. Members of the public are invited to submit written comments; the comments must be received in the regional office by Wednesday, March 7, 2018. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=274* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

February 7, 2018 Agenda

- Welcome and Roll Call
- Review, Discuss and Possibly Vote on Advisory Memorandum on Subtle Racism in South Dakota
- Public Comment
- Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 days prior to the meetings because of the exceptional circumstance of the potential government shutdown on February 8, 2018.

Dated: January 25, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–01748 Filed 1–29–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Friday February 9, 2018, at 3:00 p.m. EST for the purpose of preparing for its public meeting on voting rights issues in the state.

DATES: The meeting will be held on Friday, February 9, 2018, at 3:00 p.m. EST.

ADDRESSES: Public call information: Dial: 888–601–3878, Conference ID: 2383092.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 55 W Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=247*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Voting Rights in Indiana
Public Comment
Future Plans and Actions
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of this Committee doing work on the FY 2018 statutory enforcement report.

Dated: January 25, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–01798 Filed 1–29–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alabama Advisory Committee for To Discuss Proposed Panelists for a Hearing on Access To Voting in the State of Alabama

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Alabama Advisory Committee (Committee) will hold a meeting on Wednesday, February 7, 2018, at 11:00 a.m. (Central) for the purpose of a discussion of proposed panelists and logistics for a hearing on Access to Voting in Alabama.

DATES: The meeting will be held on Wednesday, February 7, 2017, at 11:00 a.m. (Central) Public Call Information: Dial: 888–516–2443, Conference ID: 7344613.

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

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–516–2443, conference ID: 7344613. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Alabama Advisory Committee link (*http://www.facadatabase.gov/committee/committee.aspx?cid=233&aid=17*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Proposed Panelists for a hearing on Access to Voting in Alabama
Discussion on a venue for the hearing
Next Steps
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of this Committee doing work on the FY 2018 statutory enforcement report.

Dated: January 25, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–01755 Filed 1–29–18; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–61–2017]

Foreign-Trade Zone (FTZ) 272—Lehigh, Pennsylvania; Authorization of Production Activity; Fuling Plastic USA, Inc.; (Disposable Plastic and Paper Service Ware and Kitchenware Products); Allentown, Pennsylvania

On September 27, 2017, Fuling Plastic USA, Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ Subzone 272C, in Allentown, Pennsylvania.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 46215, October 4, 2017). On January 25, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: January 25, 2018.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2018–01735 Filed 1–29–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on polyethylene retail carrier bags from the People's Republic of China (China) for the period August 1, 2016, through July 31, 2017.

DATES: Applicable January 30, 2018.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2017, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from China for the period of review (POR) August 1, 2016, through July 31, 2017.[1] On August 31, 2017, the petitioners, the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation, requested an administrative review of the order with respect to Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa), Crown Polyethylene Products (International) Ltd (Crown), and High Den Enterprises Ltd. (High Den).[2] On October 16, 2017, 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 order on PRCBs from China with respect to Nozawa, Crown, and High Den.[3] On January 5, 2018, the petitioners timely withdrew their request for an administrative review of Nozawa, and Crown.[4] On January 12, 2018, the petitioners timely withdrew their request of High Den.[5] No other party requested a review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' The petitioners withdrew their request for review within the 90-day time limit. Because we received no other requests for review of Nozawa, Crown, and High Den, and no other requests for the review of the order on PRCBs from the China with respect to other companies subject to the order, we are rescinding the administrative review of the order in full, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of PRCBs from China during the POR at rates equal to the cash deposit or bonding rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final 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 review period. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: January 24, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–01738 Filed 1–29–18; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 35754 (August 1, 2017).

[2] *See* Letter from the petitioners to Commerce, ''Re: Polyethylene Retail Carrier Bags from the People's Republic of China: Request for Administrative Review,'' dated August 31, 2017.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 48051 (October 16, 2017).

[4] *See* Letter from the petitioners to Commerce, ''Re: Polyethylene Retail Carrier Bags from the People's Republic of China: Partial Withdrawal of Request for Administrative Review,'' dated January 5, 2018.

[5] *See* Letter from the petitioners to Commerce, ''Re: Polyethylene Retail Carrier Bags from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated January 12, 2018.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium 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 an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (China), covering the period May 1, 2016, through April 30, 2017. Commerce preliminarily determines that Tianjin Magnesium International, Co., Ltd. (TMI) and Tianjin Magnesium Metal, Co., Ltd. (TMM) (collectively, TMI/TMM) had no shipments of subject merchandise during the period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable January 30, 2018.

FOR FURTHER INFORMATION CONTACT: James Terpstra, 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 May 1, 2017, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on pure magnesium from China for the POR.[1] On July 6, 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 pure magnesium from China with respect to TMI and TMM.[3] Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary results of this review is now February 5, 2018.[4]

Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off–specification pure'' magnesium).

''Off–specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope 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.[5] On July 10, 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 TMI and/or TMM.[6] This query returned no entries during the POR.[7] Additionally, in order to examine TMI's and TMM'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.[8] We received no notification from CBP of any such entries of subject merchandise concerning these companies.[9]

Because we have not received information to the contrary from CBP, consistent with our practice, we

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 20315 (May 1, 2017).

[2] *See* letter from U.S. Magnesium LLC (the petitioner), ''Pure Magnesium from the People's Republic of China: Request for Administrative Review,'' dated May 31, 2017.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 31292 (July 6, 2017). In the 2011–2012 administrative review of the order, Commerce determined TMM and TMI to be collapsed and treated as a single company for purposes of the proceeding and, because there were no changes to the facts which supported that decision since that determination was made, we continue to find that these companies are part of a single entity for this administrative review. *See Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 94 (January 2, 2014) and accompanying Issues and Decision Memorandum at Comment 5.

[4] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[5] *See* letter from TMI, ''Pure Magnesium from the People's Republic of China; A–570–832; Certification of No Sales by Tianjin Magnesium International, Co., Ltd.,'' dated August 4, 2017, at first attachment to the letter. *See* letter from TMM, ''Pure Magnesium from the People's Republic of China; A–570–832; Certification of No Sales by Tianjin Magnesium Metal Co., Ltd.,'' dated August 4, 2017, at first attachment to the letter.

[6] *See* Memorandum, ''U.S. Customs and Border Protection Data,'' dated October 16, 2017 (No Shipments Memo), at Attachment 1.

[7] *Id.* at Attachment 2.

[8] *Id.* at Attachment 3. *See also* CBP message 6273308, dated October 16, 2017.

[9] *See* No Shipments Memo, at Attachment 4.

preliminarily determine that TMI/TMM had no shipments during the POR. In addition, we find it is not appropriate to rescind this review with respect to TMI/TMM but, rather, to complete the review with respect to TMI/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.[10]

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**.[11] 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.[12] Parties who submit arguments in this proceeding 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.[13] 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).[14] 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 issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case 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, not later than 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.[15] 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 Commerce continues to determine in the final results that that TMI/TMM had no shipments of subject merchandise, any suspended entries during the POR from TMI/TMM will be liquidated at the China-wide rate.[16]

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, as provided for by section 751(a)(2)(C) of the Act: (1) For TMI/TMM, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI/TMM 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, the cash deposit rate will be the China-wide rate of 111.73 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 the 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 off 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: January 24, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–01740 Filed 1–29–18; 8:45 am]

BILLING CODE 3510–DS–P

[10] *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.

[11] *See* 19 CFR 351.309(c)(1)(ii).

[12] *See* 19 CFR 351.309(d)(1)(2).

[13] *See* 19 CFR 351.309(c)(2), (d)(2).

[14] *See* 19 CFR 351.303 (for general filing requirements).

[15] *See* 19 CFR 351.212(b)(1).

[16] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Research Performance Progress Report (RPPR)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 14, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Nadia Musa, Grants Management Division, 301–628–1338 or *nadia.musa@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The development of a standardized RPPR was an initiative of the Research Business Models (RBM) Subcommittee of the Committee on Science (CoS), a Committee of the National Science and Technology Council (NSTC). It was also

part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). Consistent with the purposes of that Act, the objective of this initiative was to establish a uniform format for reporting performance on Federally-funded research projects. NOAA has not previously used this form, but needs to become in compliance with this Act by using this form for all progress reports required for grants awarded by NOAA, starting with the reporting cycle ending January 31, 2018.

The RPPR is intended to address progress for the most recently completed period, at the frequency required or designated by the sponsoring agency. Information, once reported, does not have to be provided again on subsequent reports. The RPPR requests various types of information, regarding: accomplishments, products, participants and other collaborating organizations, impact, changes/problems, budgetary information and outcomes.

II. Method of Collection

An on line form will be used.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Emergency (request for a new information collection). Per the Paperwork Reduction Act regulations, 5 CFR 1320.13, we are making this request in order to bring NOAA research grantee reporting into compliance with mandated federal reporting requirements (2 CFR Section 200,328), which NOAA must implement for the upcoming reporting cycle on January 30, 2018.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 15 hours.

Estimated Total Annual Burden Hours: 18,000.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 18, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–01770 Filed 1–29–18; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before March 1, 2018.

ADDRESSES: Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB within 30 days of this notice's publication by either of the following methods. Please identify the comments by ''OMB Control No. 3038–0015.''

- *By email addressed to: OIRAsubmissions@omb.eop.gov* or
- *By mail addressed to:* the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington, DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (the ''Commission'') by either of the following methods. The copies should refer to ''OMB Control No. 3038–0015.''

- *By mail addressed to:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581;
- *By hand delivery/courier to the same address;* or
- Through the Commission's website at *http://comments.cftc.gov.* Please follow the instructions for submitting comments through the website.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://RegInfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Charnisky, Market Analyst, Division of Market Oversight, Commodity Futures Trading Commission, (312) 596–0630; *acharnisky@cftc.gov,* and refer to OMB Control No. 3038–0015.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 30-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: ''Copies of Crop and Market Information Reports,'' OMB Control No. 3038–0015. This is a request for extension of a currently approved information collection.

Abstract: The information collected pursuant to this rule, 17 CFR 1.40, is in the public interest and is necessary for market surveillance. Manipulation of commodity futures prices is a violation of the Commodity Exchange Act (Act). Section 9(a)(2) of the Act (7 U.S.C. 13(a)(2)) prohibits the dissemination of false or misleading or knowingly inaccurate reports that affect or tend to affect the prices of commodities. In

order to facilitate the enforcement of this provision, Commission regulation 1.40 requires that members of an exchange and FCMs provide upon request copies of any report published or given general circulation which concerns crop or market information that affects or tends to affect the price of any commodity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). A 60-day notice of intent to renew collection 3038–0015 (the ''60-Day Notice'') was published in the **Federal Register** at 82 FR 55590 (Nov. 22, 2017).

Burden Statement: The respondent burden for this collection is estimated to average 0.17 hours per response.

- *Respondents/Affected Entities:* 10.
- *Estimated Number of Responses:* 10.
- *Estimated Total Annual Burden on Respondents:* 1.7 hours.
- *Frequency of Collection:* On occasion.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 24, 2018.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2018–01686 Filed 1–29–18; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2017–0018; OMB Control Number 0704–0525]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 1, 2018.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 225 and 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations; OMB Control Number 0704–0525.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On Occasion.

Number of Respondents: 256.

Responses per Respondent: 1.

Annual Responses: 256.

Average Burden per Response: .25 hours.

Annual Burden Hours: 64.

Needs and Uses: Defense Federal Acquisition Regulation Supplement (DFARS) provision 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, is used by contracting officers to determine whether the offeror is subject to the statutory prohibition on award of contracts for commercial satellite services to certain foreign entities.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: WHS/ESD Directives Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Jennifer L. Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2018–01784 Filed 1–29–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2016–HQ–0039]

Submission for OMB Review; Comment Request

AGENCY: Office of the Surgeon General, United States Medical Command (MEDCOM), DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 1, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Heart of Recovery—Military Caregiver Needs Assessment; OMB Control Number 0702–XXXX.

Type of Request: New.

Number of Respondents: 5,000.

Responses per Respondent: 1.

Annual Responses: 5,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 2,500.

Needs and Uses: The information collection requirement is necessary to support the formation of the United States Army Office of the Surgeon General Military Caregivers Program: Heart of Recovery.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal**

Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: January 25, 2018.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–01762 Filed 1–29–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho Cleanup Project

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho Cleanup Project. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 21, 2018 8:00 a.m.–4:00 p.m.

The opportunity for public comment is at 10:30 a.m. and 2:30 p.m.

This time is subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Residence Inn Idaho Falls, 635 West Broadway, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Bradley P. Bugger, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–0833; Fax (208) 526–8789 or email: *buggerbp@id.doe.gov* or visit the Board's internet home page at: *https://energy.gov/em/icpcab/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Bradley P. Bugger, at the address above, for the most current agenda):

- Recent Public Outreach
- Idaho Cleanup Project (ICP) Overview
- Update on Integrated Waste Treatment Unit (IWTU)
- EM Budget Priorities
- Update on Status of Advanced Mixed Waste Treatment Plant (AMWTP) Future Mission Study
- State of Idaho Comments on AMWTP Future Mission
- Discussion of Future Handling of High-Level Waste
- Board Discussion of Potential Recommendations

Public Participation: The EM SSAB, Idaho Cleanup Project, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bradley P. Bugger at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Bradley P. Bugger at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Bradley P. Bugger, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/em/icpcab/listings/cab-meetings.*

Issued at Washington, DC, on January 25, 2018.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–01763 Filed 1–29–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During December 2017

	FE Docket Nos.
RAINBOW ENERGY MARKETING CORPORATION	17–148–NG
VALLEY CROSSING PIPELINE, LLC	17–146–NG
COAHUILA ENERGY	17–150–NG
CONOCOPHILLIPS CANADA MARKETING &TRADING ULC	17–147–NG
FREEPORT LNG DEVELOPMENT, L.P	17–151–LNG
BP WEST COAST PRODUCTS LLC	17–42–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during December 2017, it issued orders granting authority to import and export natural gas, and to import and export liquefied natural gas (LNG). These orders are summarized in the attached appendix and may be found on the FE website at *http://energy.gov/fe/listing-doefe-authorizationsorders-issued-2017.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of

Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

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

Robert J. Smith,

Deputy Assistant Secretary for Oil and Natural Gas (Acting).

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4126	12/5/17	17–148–NG	Rainbow Energy Marketing Corporation.	Order 4126 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4127	12/5/17	17–146–NG	Valley Crossing Pipeline, LLC	Order 4127 granting blanket authority to import/export natural gas from/to Mexico.
4128	12/12/17	17–150–NG	Coahuila Energy	Order 4128 granting blanket authority to export natural gas to Mexico.
4129	12/12/17	17–147–NG	ConocoPhillips Canada Marketing & Trading ULC.	Order 4129 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4130	12/12/17	17–151–LNG	Freeport LNG Development, L.P.	Order 4130 granting blanket authority to import LNG from various international sources by vessels.
4021–A	12/12/17	17–42–NG	BP West Coast Products LLC	Order 4021–A vacating blanket authority to import/export natural gas from/to Canada.

[FR Doc. 2018–01707 Filed 1–29–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2444–028]

Northern States Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Extension of time request.

b. *Project No.:* 2444–028.

c. *Date Filed:* December 8, 2017, and supplemented January 12, 2018.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* White River Hydroelectric Project.

f. *Location:* The project is located on the White River in Ashland County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William P. Zawacki, Director of Hydro Plants, 1414 W. Hamilton Ave., P.O. Box 8, Eau Claire, WI 54702, (715) 737–1136.

i. *FERC Contact:* Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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/doc-sfiling/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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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–2444–028.

k. *Description of Request:* The applicant requests an extension until January 31, 2021 to continue operating the project under the temporarily amended Reservoir Operating Plan. The amended plan allows the applicant to operate the reservoir up to an elevation of 712.6 feet above mean sea level, or one foot above the normally required maximum elevation. The applicant has been allowed to operate with the higher reservoir elevation since August 1, 2016 due to a turbine failure, which limited operational flexibility. At the end of the extended period, the applicant would return to the previously required elevation or request that the temporary amendment be made permanent.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, MOTION TO INTERVENE, or PROTEST as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the

requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the temporary variance request. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: January 23, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01788 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of Licenses and Soliciting Comments and Motions To Intervene

	Project Nos.
Public Service Company of New Hampshire.	1893–080, 2456–082, 7528–024, 2457–042, 2288–055, and 2287–050. HSE Hydro NH Amoskeag, LLC HSE Hydro NH Hooksett, LLC HSE Hydro NH Garvin Falls, LLC. HSE Hydro NH Ayers Island, LLC. HSE Hydro NH Canaan, LLC. HSE Hydro NH Eastman Falls, LLC. HSE Hydro NH Gorham, LLC. HSE Hydro NH Smith, LLC.

On December 29, 2017, Public Service Company of New Hampshire (transferor) and the transferees listed above filed an application for transfer of licenses for the following projects.

Project Nos.	Project names	Locations
P–1893–080	Merrimack River Project	Merrimack River, Merrimack and Hillsborough counties, NH.
P–2456–082	Ayers Island Hydroelectric Project	Pemigewasset River, Belknap and Grafton counties, NH.
P–7528–024	Canaan Project	Connecticut River, Coos County, NH.
P–2457–042	Eastman Falls Project	Pemigewasset River, Belknap and Grafton counties, NH.
P–2288–055	Gorham Project	Androscoggin River, Coos County, NH.
P–2287–050	J. Brodie Smith Project	Androscoggin River, Coos County, NH.

The transferor and transferees seek Commission approval to transfer the licenses for the above mentioned projects from the transferor to the transferees.

Applicant Contacts: For Transferor: Mr. Robert A. Bersak, Eversource Energy, 780 N. Commercial Street, P.O. Box 330, Manchester, NH 03105–0330, Phone: 603–634–3355, Email: *Robert.bersak@eversource.com* and Mr. James H. Hancock, Jr., Balch & Bingham, LLP, 1710 Sixth Avenue North, Birmingham, AL 35203, Phone: 205–226–3418, Email: *jhancock@balch.com.*

For Transferees: Mr. David Meeker, Hull Street Energy, LLC, 4920 Elm Street, Suite 205, Bethesda MD 20814, Phone: 240–800–3217, Email: *dmeeker@hullstreetenergy.com* and Mr. Jeffrey Davidson, Manatt, Phelps & Phillips, LLP, 1050 Connecticut Avenue NW, Suite 600, Washington, DC 20036, Phone: 202–585–6678, Email: *jdavidson@manatt.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice, by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene and comments 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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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(s) P–1893–080, P–2456–082, P–7528–024, P–2457–042, P–2288–055, and P–2287–050.

Dated: January 23, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01786 Filed 1–29–18; 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 Number: PR18–25–000.

Applicants: Corning Natural Gas Corporation.

Description: Tariff filing per 284.123(b),(e)/: 2018 Rate Changes to be effective 1/22/2018.

Filed Date: 1/19/18.

Accession Number: 201801195149.

Comments/Protests Due: 5 p.m. ET 2/9/18.

Docket Numbers: RP18–264–001.

Applicants: Destin Pipeline Company, L.L.C.

Description: Tariff Amendment: Amended Fuel Retention Adjustment to be effective 1/1/2018.

Filed Date: 1/16/18.

Accession Number: 20180116–5225.

Comments Due: 5 p.m. ET 1/29/18.

Docket Numbers: RP18–348–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: § 4(d) Rate Filing: Duke K410135 Release for 2018–01–13 to be effective 1/13/2018.

Filed Date: 1/16/18.

Accession Number: 20180116–5072.

Comments Due: 5 p.m. ET 1/29/18.

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 24, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–01700 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting of the California Independent System Operator Corporation:

Review of Reliability Must-Run and Capacity Procurement Mechanism

January 30, 2018, 10:00 a.m.–3:00 p.m. (PST)

The above-referenced meeting will be held at: California Independent System Operator Corporation, 250 Outcropping Way, Folsom, CA 95630.

The above-referenced meeting is open to stakeholders.

Further information may be found at *www.caiso.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER18–230, *Gilroy Energy Center, LLC*

Docket No. ER18–240, *Metcalf Energy Center, LLC*

Docket No. ER18–641, *California Independent System Operator, Corporation*

For more information, contact: Saeed Farrokhpay, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (916) 294–0322, *saeed.farrokhpay@ferc.gov.*

Dated: January 23, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01794 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–47–000]

Transwestern Pipeline Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on January 16, 2018, Transwestern Pipeline Company, LLC (Transwestern), 1300 Main Street, Houston, Texas 7700, filed a Prior Notice Request pursuant to sections 157.205, 157.208 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to: (1) Construct, own, operate and maintain certain modifications to its existing compressor units at its WT–1 Compressor Station (WT–1 Station) in Lea County, New Mexico; and (2) increase capacity on its West Texas Lateral between the WT–1 Station and Compressor Station 9 up to 130,000 thousand cubic feet per day of natural gas, 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Mr. Kelly Allen, Manager, Regulatory Affairs Department for Transwestern Pipeline Company, LLC, 1300 Main Street, Houston, Texas 77002, or call 713–989–2606, or by email *Kelly.Allen@energytransfer.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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 final environmental impact statement (FEIS) or 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 FEIS or EA.

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 commenter's 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 commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, 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 via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's website (*www.ferc.gov*) under the e-Filing link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: January 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01790 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Projects Nos. 1940–029 and 1966–054]

Wisconsin Public Service Corporation; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for new licenses for the 2.6-megawatt (MW) Tomahawk Hydroelectric Project (FERC Project No. 1940–029) and the 17.24–MW Grandfather Falls Hydroelectric Project (FERC Project No. 1966–054) and has prepared a single environmental assessment (EA) that includes both projects. Both projects are located on the Wisconsin River in Lincoln County, Wisconsin.

The EA contains the staff's analysis of the potential environmental impacts of the projects and concludes that licensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *www.ferc.gov* using the eLibrary link. For each project, 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;* toll-free at 1–866–208–3676; or for TTY, (202) 502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filing. Please file comments 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. 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 numbers P–1940–029 or P–1966–054, as appropriate.

For further information, contact Lee Emery at (202) 502–8379 or by email at *lee.emery@ferc.gov.*

Dated: January 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01787 Filed 1–29–18; 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 corporate filings:

Docket Numbers: EC18–50–000.
Applicants: South Carolina Electric & Gas Company.
Description: Application for Federal Power Act Section 203 Approval and Request for Expedited Consideration of South Carolina Electric & Gas Company, et al.
Filed Date: 1/22/18.
Accession Number: 20180122–5200.
Comments Due: 5 p.m. ET 2/12/18.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–32–000.
Applicants: Gray Hawk Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Gray Hawk Solar, LLC.
Filed Date: 1/23/18.
Accession Number: 20180123–5065.
Comments Due: 5 p.m. ET 2/13/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–426–003.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Missouri River Energy Services Member Formula Rate (Denison) Compliance Filing to be effective 2/1/2017.
Filed Date: 1/22/18.
Accession Number: 20180122–5159.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: ER18–360–001.
Applicants: Entergy Arkansas, Inc.
Description: Tariff Amendment: EAI–AECI LBA Agreement Errata to be effective 12/1/2017.
Filed Date: 1/22/18.
Accession Number: 20180122–5167.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: ER18–692–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–01–22_SA 3084 St. Joseph Phase II–NIPSCO GIA (J351) to be effective 1/5/2018.
Filed Date: 1/22/18.
Accession Number: 20180122–5151.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: ER18–693–000,
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Notice of Cancellation; SA 804, Fast Process Agreement with MDT (Fox Farm Road) to be effective 1/23/2018.
Filed Date: 1/22/18.
Accession Number: 20180122–5158.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: ER18–694–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: La Paloma Generating Company GSFA and GIA Amendment (SA 18) to be effective 1/23/2018.
Filed Date: 1/22/18.
Accession Number: 20180122–5177.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: ER18–695–000.
Applicants: Baltimore Gas and Electric Company, PECO Energy Company.
Description: Request for Abandonment Costs Recovery Pre-Approval for PJM RTEP Project 9A of Baltimore Gas and Electric Company, et al.
Filed Date: 1/22/18.
Accession Number: 20180122–5196.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: ER18–696–000.
Applicants: Summer Energy Northeast, LLC.
Description: § 205(d) Rate Filing: REP Energy LLC Name Change to Summer

Energy Northeast, LLC to be effective 1/23/2018.

Filed Date: 1/23/18.

Accession Number: 20180123–5048.

Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: ER18–697–000.

Applicants: Gray Hawk Solar, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 3/9/2018.

Filed Date: 1/23/18.

Accession Number: 20180123–5051.

Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: ER18–699–000.

Applicants: Wisconsin Electric Power Company.

Description: § 205(d) Rate Filing: Amendment to WPPI Metering Agreement (FERC Rate Schedule No. 115) to be effective 1/24/2018.

Filed Date: 1/23/18.

Accession Number: 20180123–5099.

Comments Due: 5 p.m. ET 2/13/18.

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 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–01697 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP18–45–000]

Dominion Energy Transmission, Inc.; Notice of Application

Take notice that on January 10, 2018, Dominion Energy Transmission, Inc. (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed in Docket No. CP18–45–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to construct and operate the Sweden Valley Project (Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Kenan W. Carioti, Regulatory & Certificates Analyst III, Dominion Energy Transmission, Inc., 707 East Main Street, Richmond, VA 23219 at (804) 771–4018.

Specifically, the Project will enable Dominion to provide 120,000 dekatherms per day of firm transportation service from Pennsylvania to Ohio for delivery to Tennessee Gas Pipeline Company, L.L.C. The Project will include construction of: Approximately 1.7 miles 20-inch-diameter pipeline lateral to the new Port Washington Metering and Regulation (M&R) delivery point in Tuscarawas County, OH; approximately 3.2 miles of 24-inch-diameter pipeline looping in Greene County, PA; the re-wheel of compressors on three existing centrifugal compression sets at Dominion's existing Newark Compressor Station in Licking County, OH; the installation of regulation equipment at Dominion existing South Bend Compressor Station in Armstrong County, PA and Leidy M&R Station in Clinton County, PA; and the construction of related appurtenant facilities. Dominion is proposing incremental rates for transportation service on the facilities proposed for construction herein. The cost of the project will be $49,876,709 million.

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 final environmental impact statement (FEIS) or 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 FEIS or 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 seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties.

However, the non-party commentors 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 an original and 7 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 February 14, 2018.

Dated: January 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01789 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–697–000]

Gray Hawk Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Gray Hawk Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 12, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–01695 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. 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.

Docket No.	File date	Presenter or requester
Prohibited		
1. EC17–88–000	1–12–2018	Commissioner Neil Chatterjee.[1]
2. CP17–15–000	1–18–2018	Dominion Energy.

Docket No.	File date	Presenter or requester
3. CP15–554–000 CP15–555–000	1–22–2018	FERC Staff.[2]
Exempt		
1. P–2100–000	1–8–2018	U.S. House Representative Doug LaMalfa.
2. CP15–554–000 CP15–554–001. CP15–554–002. CP15–555–000. CP15–555–001.	1–10–2018	U.S. Senator Tim Kaine.
3. CP14–529–000	1–10–2018	U.S. Senators.[3]
4. P–10808–000	1–10–2018	U.S. House Representative John Moolenaar.
5. CP16–454–000 CP16–455–000	1–12–2018	FERC Staff.[4]

[1] Memorandum reporting phone call on 1/1/2018 with Williams Scherman.
[2] Email dated 1/19/2018 with Professor Ryan Emanuel from North Carolina State University.
[3] Senators Edward J. Markey and Elizabeth Warren.
[4] Email dated 1/1/2018 with Melanie A. Stevens from the U.S. Department of Justice.

Dated: January 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–01696 Filed 1–29–18; 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: CP18–48–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Joint Application of Tennessee Gas Pipeline Company, L.L.C., Kinder Morgan Tejas Pipeline LLC, and Kinder Morgan Border Pipeline LLC for a Certificate of Public Convenience and Necessity and Related Authorizations.
Filed Date: 1/16/18.
Accession Number: 20180116–5093.
Comments Due: 5 p.m. ET 2/6/18.

Docket Numbers: RP18–359–000.
Applicants: Dominion Energy Carolina Gas Transmission.
Description: Compliance filing DECG—2017 Interruptible Revenue Sharing Report.
Filed Date: 1/19/18.
Accession Number: 20180119–5159.
Comments Due: 5 p.m. ET 1/31/18.

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 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–01699 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR18–11–000]

Stateline Crude, LLC; Notice of Petition for Declaratory Order

Take notice that on January 22, 2018, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2016), Stateline Crude, LLC (Stateline), filed a petition for a declaratory order (petition) seeking approval of the overall rate structure and terms of service for a new crude oil pipeline system in the Delaware Basin region of Texas and New Mexico. The proposed facilities will gather and transport crude oil produced in the Delaware Basin to interconnections with Plains Pipeline, L.P. and Rangeland RIO Pipeline in Reeves and Loving Counties, Texas, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on February 16, 2018.

Dated: January 23, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01785 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14785–000]

Alaska Department of Fish and Game; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14785–000.

c. *Date Filed:* October 18, 2017.

d. *Applicant:* Alaska Department of Fish and Game.

e. *Name of Project:* Hidden Falls Lake Hydroelectric Project.

f. *Location:* The project is located on Eastern Baranof Island in the City of Sitka Borough, approximately 20 miles northeast of the Sitka, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Scott Wagner, NSRAA, 1308 Sawmill Creek Road, Sitka, AK 99835, (907) 747–6850.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, or *christopher.chaney@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533, issued May 8, 1991, 56 FR 23,108 (May 20, 1991)) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission: 60 days from the issuance of this notice. All reply comments must be filed with the Commission: 105 days from the issuance of this notice.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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–14785–000.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed Hidden Falls Lake Hydroelectric Project would consist of: (1) An existing, approximately 18-foot by 24-foot powerhouse containing one existing 250-kilowatt (kW) turbine/generating unit; (2) a proposed, approximately 27-foot by 31-foot powerhouse containing one proposed 80-kW turbine/generating unit; and (3) appurtenant facilities. The applicant estimates the project would have an average annual generation of 1,401,600 kW-hours.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number, P–14785, in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

n. *Development Application:* Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, MOTION TO INTERVENE, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: January 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01791 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–46–000]

Adelphia Gateway, LLC; Notice of Applications

Take notice that on January 12, 2018, Adelphia Gateway, LLC (Adelphia), 1415 Wyckoff Road Wall, New Jersey 07719, filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's rules and regulations requesting certificate authority to acquire and convert certain existing pipeline and auxiliary facilities, to construct additional auxiliary facilities, and to own and operate the existing and new facilities as an interstate natural gas pipeline system for its proposed Adelphia Gateway Pipeline Project located in Pennsylvania and Delaware. Adelphia plans to provide 250,000 Dekatherms per day (Dth/d) of natural gas transportation capacity from an interconnection with Texas Eastern Transmission, LP (Texas Eastern) in Bucks County, Pennsylvania to Marcus Hook, Delaware County, Pennsylvania, and 525,000 Dth/d of combined natural gas transportation capacity from an interconnection with Texas Eastern in Bucks County and an interconnection with Transcontinental Gas Pipeline Company, LLC in Northampton County to Martins Creek Terminal, Martins Creek, Pennsylvania, all as more fully described 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Adelphia proposes to (i) acquire an existing 84-mile, 18-inch-diameter mainline and 4.5-mile, 20-inch-diameter lateral gas pipeline, and existing appurtenant and auxiliary facilities, all of which are currently owned and operated in non-FERC jurisdictional service by Interstate Energy Company (ICE); (ii) convert a portion of these existing facilities from dual oil and gas intrastate transportation service to solely natural gas transportation service; and (iii) construct additional new facilities including two compressor stations totaling 11,250 horsepower, two pipeline laterals totaling 4.6-miles extending from the planned Marcus Hook Compressor Station to interconnections in Chester, Delaware County, Pennsylvania and Claymont, New Castle County, Delaware, and various M&R stations.

Additionally, Adelphia requests: (i) A blanket certificate pursuant to Part 157, Subpart F and a blanket certificate pursuant to Part 284, Subpart G of the Commission's regulations; (ii) approval of its proposed pro forma tariff and certain non-conforming provisions in its firm service agreements with existing shippers on the IEC system; and (iii) any such other authorizations and waivers as may be necessary from the Commission to allow Adelphia to undertake the activities described in its Application.

Any questions regarding this application should be directed to William P. Scharfenberg, Assistant General Counsel, Adelphia Gateway, LLC, 1415 Wyckoff Road, Wall, NJ 07719, or call (732) 938–1134, or email: *WScharfenberg@NJResources.com.*

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 final environmental impact statement (FEIS) or 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 FEIS or 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 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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 an original and 5 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 February 13, 2018.

Dated: January 23, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01792 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2698–100]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for a temporary variance from elevation requirements.

b. *Project No.:* 2698–100.

c. *Date Filed:* October 27, 2017.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* East Fork Hydroelectric Project.

f. *Location:* The project is located on the East Fork of the Tuckasegee River in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jeff Lineberger, Duke Energy Carolinas, LLC, 526 S. Church Street, Mail Stop EC 12Y, Charlotte, NC 28202, (704) 382–5942.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* February 23, 2018.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations 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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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–2698–100.

k. *Description of Request:* Duke Energy Carolinas, LLC requests Commission approval for temporary modifications of normal reservoir elevations to perform maintenance work at the Tennessee Creek, Bear Creek, and Cedar Cliff Developments of the project. Duke Energy Carolinas, LLC is proposing to begin the drawdowns starting at Bear Creek Lake, then Cedar Cliff Lake, and then Tanasee Creek and Wolf Creek Lakes respectively. Drawdowns and refills would begin from February 15, 2018 and continue through August 2018. Duke Energy Carolinas, LLC will also close some of its recreation areas during the drawdown to include Bear Creek Access Area, Cedar Cliff Access Area, and Wolf Creek Access Area. Finally, Duke Energy Carolinas, LLC has consulted with the North Carolina Wildlife Resources Commission, the U.S. Fish and Wildlife Service, the United States Forest Service, and the North Carolina Division of Water Resources concerning these temporary modifications. Duke Energy Carolinas, LLC also consulted with the North Carolina State Historic Preservation Office and the Eastern Band of Cherokee Indians Tribal Historic Preservation Office.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: January 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–01793 Filed 1–29–18; 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: ER18–56–001.

Applicants: Midcontinent Independent System Operator, Inc., Consumers Energy Company.

Description: Compliance filing: 2018–01–24_Compliance filing re Consumers

depreciation rates to be effective 1/1/2018.

Filed Date: 1/24/18.

Accession Number: 20180124–5008.

Comments Due: 5 p.m. ET 2/14/18.

Docket Numbers: ER18–700–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–01–23_SA 3006 Duke-Jordan Creek 1st Revised GIA (J515) to be effective 1/8/2018.

Filed Date: 1/23/18.

Accession Number: 20180123–5132.

Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: ER18–701–000.

Applicants: Fenton Power Partners I, LLC.

Description: § 205(d) Rate Filing: Fenton Notice of Non-Material Change in Status and MBR Tariff Revision to be effective 3/25/2018.

Filed Date: 1/23/18.

Accession Number: 20180123–5134.

Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: ER18–702–000.

Applicants: Hoosier Wind Project, LLC.

Description: § 205(d) Rate Filing: Hoosier Wind Notice of Non-Material Change in Status and MBR Tariff Revision to be effective 3/25/2018.

Filed Date: 1/23/18.

Accession Number: 20180123–5143.

Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: ER18–703–000.

Applicants: Wapsipinicon Wind Project, LLC.

Description: § 205(d) Rate Filing: Wapsipinicon Notice of Non-Material Change in Status and MBR Tariff Revision to be effective 3/25/2018.

Filed Date: 1/23/18.

Accession Number: 20180123–5150.

Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: ER18–704–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc.—Resource Termination for Portion of Capacity Supply Obligation of Blue Sky West LLC.

Filed Date: 1/23/18.

Accession Number: 20180123–5158.

Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: ER18–705–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 4903; Queue No. AC1–012 to be effective 8/4/2017.

Filed Date: 1/24/18.

Accession Number: 20180124–5047.

Comments Due: 5 p.m. ET 2/14/18.

Docket Numbers: ER18–706–.000

Applicants: Mid-Atlantic Interstate Transmission, LLC, American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT et al submits ECSA, Service Agreement Nos. 4797, 4806, and 4859 to be effective 3/26/2018.

Filed Date: 1/24/18.

Accession Number: 20180124–5064.

Comments Due: 5 p.m. ET 2/14/18.

Docket Numbers: ER18–707–000.

Applicants: AL Sandersville, LLC.

Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 1/25/2018.

Filed Date: 1/24/18.

Accession Number: 20180124–5086.

Comments Due: 5 p.m. ET 2/14/18.

Docket Numbers: ER18–708–000.

Applicants: Effingham County Power, LLC.

Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 1/25/2018.

Filed Date: 1/24/18.

Accession Number: 20180124–5091.

Comments Due: 5 p.m. ET 2/14/18.

Docket Numbers: ER18–709–000.

Applicants: Mid-Georgia Cogen L.P.

Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 1/25/2018.

Filed Date: 1/24/18.

Accession Number: 20180124–5097.

Comments Due: 5 p.m. ET 2/14/18.

Docket Numbers: ER18–710–000.

Applicants: MPC Generating, LLC.

Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 1/25/2018.

Filed Date: 1/24/18.

Accession Number: 20180124–5107.

Comments Due: 5 p.m. ET 2/14/18.

Docket Numbers: ER18–711–000.

Applicants: Walton County Power, LLC.

Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 1/25/2018.

Filed Date: 1/24/18.

Accession Number: 20180124–5110.

Comments Due: 5 p.m. ET 2/14/18.

Docket Numbers: ER18–712–000.

Applicants: Washington County Power, LLC.

Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 1/25/2018.

Filed Date: 1/24/18.

Accession Number: 20180124–5115.

Comments Due: 5 p.m. ET 2/14/18.

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 24, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–01698 Filed 1–29–18; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0645]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 2, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0645.

Title: Sections 17.4, 17.48 and 17.49, Antenna Structure Registration Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 16,000 respondents; 154,162 responses.

Estimated Time per Response: .1–.25 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third-party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

Total Annual Burden: 18,109 hours.

Total Annual Cost: $51,900.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for a revision of this information collection in order to obtain the full three-year approval. The Commission has adjusted its burden and cost estimates in order to update the collection burdens necessary to implement a uniform registration process as well as safe and effective lighting procedures for owners of antenna structures.

Section 17.4 includes third party disclosure requirements. Specifically, Section 17.4 requires the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) to register the structure with the Commission. This includes those structures used as part of the stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head-end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission. Section 17.4(f) provides that antenna structure owners shall immediately provide to all tenant licensees and permittees notification that the structure has been registered. This may be done by providing either a copy of Form 854R or a link to the FCC antenna structure registration website. This notification may be done electronically or via paper mail.

Section 17.4(g) requires antenna structure owners to display the Antenna Structure Registration Number in a conspicuous place that is readily visible near the base of the antenna. This rule specifically requires that the Antenna Structure Number be displayed so that it is conspicuously visible and legible from the publicly accessible area nearest the base of the antenna structure along the publicly accessible roadway or path. Where an antenna structure is surrounded by a perimeter fence, or where the point of access includes an access gate, the Antenna Structure Registration Number should be posted on the perimeter fence or access gate. Where multiple antenna structures having separate Antenna Structure Registration Numbers are located within a single fenced area, the Antenna Structure Registration Numbers must be posted both on the perimeter fence or access gate and near the base of each antenna structure. If the base of the antenna structure has more than one point of access, the rule requires that the Antenna Structure Registration Number be posted so that it is visible at the publicly accessible area nearest each such point of access. The registration number is issued to identify antenna structure owners in order to enforce the Congressionally-mandated provisions related to the owners.

Sections 17.48 and 17.49 contain reporting and recordkeeping requirements. Section 17.48(a) requires that antenna structure owners immediately report outages of top steady burning lights or flashing antenna structure lights to the FAA, if not corrected within 30 minutes. Upon receipt of the outage notification, the FAA will issue a Notice to Airmen (NOTAM), which notifies aircraft of the outage. Consistent with FAA requirements, if a lighting outage cannot be repaired within the FAA's original NOTAM period, Section 17.48(a) further requires the antenna structure owner to notify the FAA of that fact and provide any needed updates to its estimated return-to-service date. The rule also requires antenna structure owners to continue to provide these updates to the FAA every NOTAM period until its lights are repaired.

Section 17.49 requires antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights for two years and provide the records to the Commission upon request.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–01649 Filed 1–29–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1249]

Information Collection Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2235, or email: *Eliot.Greenwald.@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1249.

OMB Approval Date: 01/18/2018.

Expiration Date: 07/31/2018.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–

123, Financial Data, Complaints, and Other Compliance Information.

Form No.: N/A.

Respondents: Business or other for-profit; Individuals or household; State, local or Tribal Governments.

Number of Respondents: 72 respondents; 3,614 responses.

Estimated Time per Response: 0.5 hours (30 minutes) to 50 hours.

Frequency of Response: Annual, monthly, on occasion, and one-time reporting requirements; Recordkeeping and Third-Party Disclosure requirements.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the ADA, Pub. L. 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 5,537 hours.

Total Annual Cost: $9,000.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance,'' in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On December 21, 2001, the Commission released the *2001 TRS Cost Recovery Order,* document FCC 01–371, in which the Commission:

(a) Directed the Interstate Telecommunications Relay Services (TRS) Fund (TRS Fund) administrator to continue to use the average cost per minute compensation methodology for the traditional TRS compensation rate;

(b) required TRS providers to submit certain projected TRS-related cost and demand data to the TRS Fund Administrator to be used to calculate the rate; and

(c) directed the TRS Fund administrator to expand its form for providers to itemize their actual and projected costs and demand data, to include specific sections to capture speech-to-speech (STS) and video relay service (VRS) costs and minutes of use.

On November 19, 2007, the Commission released the *2007 Cost Recovery Order,* document FCC 07–486, in which the Commission:

(a) Adopted a new cost recovery methodology for interstate traditional TRS and interstate STS based on the Multi-state Average Rate Structure (MARS) plan, under which interstate TRS compensation rates are determined by weighted average of the states' intrastate compensation rates, and which includes for STS additional compensation approved by the Commission for STS outreach;

(b) adopted a new cost recovery methodology for interstate captioned telephone service (CTS), as well as internet Protocol captioned telephone service (IP CTS), based on the MARS plan;

(c) adopted a cost recovery methodology for internet Protocol (IP) Relay based on price caps;

(d) adopted a cost recovery methodology for VRS that adopted tiered rates based on call volume;

(e) clarified the nature and extent that certain categories of costs are compensable from the Fund; and;

(f) addressed certain issues concerning the management and oversight of the Fund, including prohibiting financial incentives offered to consumers to make relay calls and the role of the Interstate TRS Fund Advisory Council.

47 CFR 64.604(c)(5)(iii)(D), mandatory minimum standards adopted in the *2007 Cost Recovery Order,* requires that TRS providers submit to the TRS Fund administrator information reasonably requested by the administrator, including the following for intrastate traditional TRS, STS, and CTS:

(a) The per-minute compensation rate(s);

(b) whether the rate applies to session minutes or conversation minutes;

(c) the number of intrastate session minutes; and

(d) the number of intrastate conversation minutes.

47 CFR 64.604(a)(7) requires that in order for VRS providers to be compensated from the TRS Fund for U.S. residents making VRS calls from international points to the U.S., the providers must pre-register the users before they leave the country for the purpose of making VRS calls from international points for up to a maximum period of 4 weeks.

47 CFR 64.604(c)(1) requires each state and interstate TRS provider to maintain a log of consumer complaints and annually file a summary of the complaint log with the Commission.

47 CFR 64.604(c)(2) requires each state and interstate TRS provider to submit contact information to the Commission.

47 CFR 64.604(c)(5)(iii)(D)(*3*) requires providers to submit speed of answer data.

47 CFR 64.604(c)(5)(iii)(G) requires each new TRS provider to submit to the TRS Fund administrator a notification of its intent to participate in the TRS Fund 30 days prior to submitting its first report of TRS interstate minutes of use.

47 CFR 64.604(c)(6) provides procedures for consumers to file informal complaints alleging violations of the TRS rules, for TRS providers to respond to these complaints, and for the Commission to refer complaints concerning intrastate TRS to the states.

47 CFR 64.604(c)(7) requires that contracts between state TRS administrators and the TRS vendor provide for the transfer of TRS customer profile data from the outgoing TRS vendor to the incoming TRS vendor.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–01650 Filed 1–29–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1150]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 2, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1150.

Title: Telecommunications Relay Services Certification Applications and Video Relay Service Compliance Requirements, CG Docket Nos. 03–123 and 10–51.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 72 respondents; 412 responses.

Estimated Time per Response: 0.5 hours (30 minutes) to 25 hours.

Frequency of Response: Annual, one-time and on occasion reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection is found at section 225 of the Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the ADA, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 1,179 hours.

Total Annual Cost: $24,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In 1991, the Commission adopted rules governing the telecommunications relay services (TRS) program and procedures for each state TRS program to apply for initial Commission certification and renewal of Commission certification of each state program. *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* Report and Order and Request for Comments, document FCC 91–213, published at 56 FR 36729, August 1, 1991 (*1991 TRS Implementation Order*).

On July 28, 2011, the Commission released *Structure and Practices of the Video Relay Service Program,* document FCC 11–118, published at 76 FR 47469, August 5, 2011, and at 76 FR 47476, August 5, 2011 (*VRS Certification Order*), adopting final and interim rules—designed to help prevent fraud and abuse, and ensure quality service, in the provision of internet-based forms of Telecommunications Relay Services (iTRS). *The VRS Certification Order* amended the Commission's process for certifying internet-based TRS (iTRS) providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of iTRS to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules and to eliminate waste, fraud and abuse through improved oversight of such providers.

On October 17, 2011, the Commission released *Structure and Practices of the Video Relay Service Program,* Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, document FCC 11–155, published at 76 FR 67070, October 31, 2011 (*VRS Certification Reconsideration Order*), modifying two aspects of information collection requirements contained in the *VRS Certification Order.*

The *VRS Certification Order* as modified by the *VRS Certification Reconsideration* contains information collection requirements with respect to the following eight requirements, all of which are intended to ensure that providers are qualified to provide iTRS in compliance with the Commission's rules with no or minimal service interruption.

(*A*) *Required Evidence for Submission for Eligibility Certification.* Each potential iTRS provider must submit full and detailed information in its application for certification that shows its ability to comply with the Commission's rules. Each applicant must provide a detailed description of how it will meet all non-waived mandatory minimum standards applicable to each form of TRS offered, including documentary and other evidence.

In the case of VRS, such documentary and other evidence shall also demonstrate that the applicant leases, licenses or has acquired its own facilities and operates such facilities associated with TRS call centers and employs communications assistants, on a full or part-time basis, to staff such call centers at the date of the application. Such evidence shall include but not be limited to:

1. For VRS applicants operating five or fewer call centers within the United States, a copy of each deed or lease for each call center;

2. For VRS applicants operating more than five call centers within the United States, a copy of each deed or lease for a representative sampling of five call centers;

3. For VRS applicants operating call centers outside of the United States, a copy of each deed or lease for each call center;

4. For all applicants, a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, members of its board of directors, general partners (in the case of a partnership), and managing members (in the case of a limited liability company);

5. For all applicants, a list of the number of applicant's full-time and part-time employees involved in TRS operations, including and divided by the following positions: Executives and officers; video phone installers (in the case of VRS), communications assistants, and persons involved in marketing and sponsorship activities;

6. Where applicable, a description of the call center infrastructure, and for all core call center functions (automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration) a statement whether such equipment is owned, leased or licensed (and from whom if leased or licensed) and proofs of purchase, leases or license agreements, including a complete copy of any lease or license agreement for automatic call distribution;

7. For all applicants, copies of employment agreements for all of the provider's employees directly involved in TRS operations, executives and communications assistants, and a list of

names of employees directly involved in TRS operations need not be submitted with the application, but must be retained by the applicant and submitted to the Commission upon request; and

8. For all applicants, a list of all sponsorship arrangements relating to internet-based TRS, including a description of any associated written agreements; copies of all such arrangements and agreements must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request.

(*B*) *Submission of Annual Report.* Providers submit annual reports that include updates to the information listed under Section *A* above or certify that there are no changes to the information listed under Section *A* above.

(*C*) *Requiring Providers to Seek Prior Authorization of Voluntary Interruption of Service.* A VRS provider seeking to voluntarily interrupt service for a period of 30 minutes or more in duration must first obtain Commission authorization by submitting a written request to the Commission's Consumer and Governmental Affairs Bureau (CGB) at least 60 days prior to any planned service interruption, with detailed information of:

(i) Its justification for such interruption;

(ii) Its plan to notify customers about the impending interruption; and

(iii) Its plans for resuming service, so as to minimize the impact of such disruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption.

(*D*) *Reporting of Unforeseen Service Interruptions.* With respect to brief, unforeseen service interruptions or in the event of a VRS provider's voluntary service interruption of less than 30 minutes in duration, the affected provider must submit a written notification to CGB within two business days of the commencement of the service interruption, with an explanation of when and how the provider has restored service or the provider's plan to do so imminently. In the event the provider has not restored service at the time such report is filed, the provider must submit a second report within two business days of the restoration of service with an explanation of when and how the provider has restored service.

(*E*) *Applicant Certifying Under Penalty of Perjury for Certification Application.* The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for iTRS certification with first-hand knowledge of the accuracy and completeness of the information provided must certify under penalty of perjury that all application information required under the Commission's rules and orders has been provided and that all statements of fact, as well as all documentation contained in the application submission, are true, accurate, and complete.

(*F*) *Certified Provider Certifying Under Penalty of Perjury for Annual Compliance Filings.* The CEO, CFO, or other senior executive of an iTRS provider with first-hand knowledge of the accuracy and completeness of the information provided, when submitting an annual compliance report under 47 CFR 64.606(g), must certify under penalty of perjury that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in the annual compliance report submission, are true, accurate, and complete.

(*G*) *Notification of Service Cessation.* An applicant for certification must give its customers at least 30-days notice that it will no longer provide service should the Commission determine that the applicant's certification application does not qualify for certification under 47 CFR 64.606(a)(2) of the Commission's rules.

(*H*) *Notification on Website.* A provider must provide notification of temporary service outages to consumers on an accessible website, and the provider must ensure that the information regarding service status is updated on its website in a timely manner.

On June 10, 2013, the Commission made permanent the interim rule adopted in the *VRS Certification Order* requiring all applicants and providers of iTRS to certify, under penalty of perjury, that their certification applications and annual compliance reports are truthful, accurate, and complete.

Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking, document FCC 13–82, published at 78 FR 40582, July 5, 2013.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–01753 Filed 1–29–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 2018.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. Hamilton Bancorp, Inc., Towson, Maryland; to engage in lending activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, January 25, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–01756 Filed 1–29–18; 8:45 am]

BILLING CODE 6210–01–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket Number: 101242018–111–02]

Notice of Funding Availability: Council-Selected Restoration Component 2017 Funded Priorities List for Comprehensive Plan Commitment and Planning Support

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) announces the Notice of Funding Availability for the Council-Selected Restoration Component 2017 Funded Priorities List (FPL) for Comprehensive Commitment and Planning Support under the Council-Selected Restoration Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

DATES: Applications will be accepted until April 30, 2018.

FOR FURTHER INFORMATION CONTACT: Kristin Smith, Council staff, telephone number: 504–444–3558; or email *grantsoffice@restorethegulf.gov.*

SUPPLEMENTARY INFORMATION: The Council approved the Council-Selected Restoration Component 2017 Funded Priorities List for Comprehensive Plan Commitment and Planning Support (2017 CPS FPL or CPS FPL) on January 24, 2018, authorized under the Council-Selected Restoration Component of the RESTORE Act (33 U.S.C. 1321(t)(2)). The Council has published a Notice of Funding Availability (NOFA) for financial assistance available through the CPS FPL, which provides guidance to Council members on the steps necessary to submit applications for funding to enhance collaboration, coordination, public engagement, and use of best available science needed to make efficient use of Gulf restoration funds resulting from the Deepwater Horizon oil spill. The CPS FPL awards will support the Council's commitment to a coordinated approach to ecosystem restoration, as called for in the Comprehensive Plan Update 2016: Restoring the Gulf Coast's Ecosystem and Economy. The CPS FPL was finalized in September 2017 and was officially approved by the Council in the January 24, 2018 vote. The full text of the NOFA for the CPS FPL awards is available on the Council website at *https://www.restorethegulf.gov/sites/default/files/GO-RES_20180124_NOFA_CPS.pdf.* To locate the opportunity on *www.grants.gov,* enter Funding Opportunity Number GCC–FPL–18–001 in the main search box.

Keala J. Hughes,

Director of External Affairs & Tribal Relations, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2018–01702 Filed 1–29–18; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–18CI; Docket No. CDC–2018–0009]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed information collection project entitled ''Evaluation of TransLife Center (TLC): A Locally-Developed Combination Prevention Intervention for Transgender Women at High Risk of HIV Infection.'' The collection is part of a research study designed to evaluate the efficacy of a locally developed and potentially effective intervention, TransLife Center (TLC), which provides combination HIV prevention services to adult transgender women at high risk for HIV infection.

DATES: CDC must receive written comments on or before April 2, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0009 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number.

Please note: Submit all Federal comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Evaluation of TransLife Center (TLC): A Locally-Developed Combination Prevention Intervention for Transgender Women at High Risk for HIV Infection—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC seeks to request a two-year OMB approval to collect data related to a project entitled ''Evaluation of TransLife Center (TLC): A Locally-Developed Combination Prevention Intervention for Transgender Women at High Risk for HIV Infection.'' With this study, CDC

seeks to evaluate the efficacy of TLC, which provides combination (biomedical, behavioral and social/structural) HIV prevention and care services to adult transgender women at high risk for HIV infection, in a culturally specific and accessible environment.

The information collected will help evaluate whether the TLC intervention is an effective HIV-prevention strategy by assessing whether exposure to TLC services results in improvements in participants' health and HIV prevention behaviors. In addition, CDC will assess whether intervention participants' behaviors significantly change from baseline to 4 and 8-month follow-up periods.

CDC will conduct the study in the TLC program's home base of Chicago, Illinois. The study population will include 150 HIV-negative adult transgender women living in the Chicago metropolitan area. Participants will be at least 18 years of age; self-identify as transgender, transsexual, women and/or female whom had assigned male sex at birth; and have a self-reported history of sex with men in the past four months. The study population will also include 10 TLC staff members. Staff members will be adults, involved in the delivery of TLC intervention services.

CDC anticipates enrollment of a diverse sample of transgender women comprised mainly of racial/ethnic minority participants under 35 years of age, consistent with the current TLC program and the epidemiology of HIV infection among transgender women. Intervention participants recruited to the study through a combination of approaches, including traditional print advertisement, referral, in-person outreach, and through word of mouth. TLC staff members will randomly selected to participate in the evaluation.

CDC will use a quantitative assessment to collect information for this study. Researchers will deliver the assessment at the time of study enrollment and again at 4-month and 8-month follow-ups. CDC will use the assessment to measure changes in sexual risk behavior including condom use and pre-exposure prophylaxis (PrEP) care engagement. Intervention mediators, including gender affirmation, collective self-esteem and social support, and intervention satisfaction measured. Participants will complete the assessment at baseline and again at 4- and 8-month follow-ups after joining the TLC program.

CDC will also examine intervention experiences through semi-structured interview with 20 of the 150 TLC participants and 10 TLC staff members involved in the delivery of services through the TLC intervention. The interviews will capture participants and staff views about the TLC implementation process, the process through which the TLC intervention influences HIV risk behavior, and the role of the intervention in addressing social determinates of health (housing, employment, legal issues, health care access).

CDC expects that 50% of transgender women screened will meet study eligibility and the initial screening to take approximately four minutes to complete. It will take respondents one minute to provide contact information. On three occasions, CDC will administer the assessment to 150 participants. The assessment will take 60 minutes (1 hour) to complete. On a single occasion, CDC will administer the interview to 30 participants (20 intervention participants and 10 TLC staff). The interview will take 60 minutes (1 hour) to complete.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 252.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General Public—Adults	Eligibility Screener	150	1	4/60	10
General Public—Adults	Contact Information	75	1	1/60	2
General Public—Adults	Assessment	75	3	1.0	225
General Public—Adults	Interview	15	1	1.0	15
Total					252

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. 2018–01743 Filed 1–29–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Mother and Infant Home Visiting Program Evaluation (MIHOPE): Long-Term Follow-Up.

OMB No.: 0970–0402.

Description: The Administration for Children and Families (ACF), in partnership with the Health Resources and Services Administration (HRSA), both of the U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the Mother and Infant Home Visiting Program Evaluation Long-Term Follow-Up project (MIHOPE–LT). The purpose of MIHOPE–LT is to conduct follow-up studies that assess the long-term impact of the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program. The design of MIHOPE–LT calls for multiple follow-up points including when the participating children are in kindergarten, 3rd grade, early adolescence, and late adolescence. This **Federal Register** Notice is specific to the first follow-up study. Data collected during the first follow-up study (when the children from the MIHOPE sample are of kindergarten age) will include the following: (1) A one-hour survey with

the child's primary caregiver (who will be the mother if she is available), (2) direct assessments of child development, (3) a semi-structured interview with the caregiver, (4) surveys with the child's teacher, (5) a direct assessment of the caregiver, and (6) 15 minutes of videotaped interactions between the caregiver and child. In addition to collecting these data, the MIHOPE–LT project will also maintain up-to-date consent forms for the collection of administrative data. Future information collection requests and related **Federal Register** Notices will describe future data collection efforts for this project.

Data collected during the kindergarten follow-up study will be used to estimate the effects of MIECHV-funded programs on seven domains: (1) Maternal health; (2) child health; (3) child development and school performance; (4) child maltreatment; (5) parenting; (6) crime or domestic violence; and (7) family economic self-sufficiency.

Respondents: The respondents in this follow-up study will include 4,115 families who participated in MIHOPE and 4,115 teachers of the focal children from those families.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Survey of caregivers	4115	1372	1	1	1372
Direct assessments of children	4115	1372	1	1.5	2058
Semi-structured interview with caregivers	100	33	1	2	66
Survey of the focal children's teachers	4115	1372	1	0.5	686
Direct assessments of caregivers	4115	1372	1	0.25	343
Videotaped caregiver-child interactions	8230	2743	1	0.25	686

Estimated Total Annual Burden Hours: 5,211.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2018–01683 Filed 1–29–18; 8:45 am]

BILLING CODE 4184–77–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request *Title:* Tribal Maternal, Infant, and Early Childhood Home Visiting Program: Guidance for Submitting an Annual or Final Report to the Secretary

OMB No.: 0970–0409.

Description: Section 511(e)(8)(A) of Title V of the Social Security Act requires that grantees under the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program for states and jurisdictions submit an annual report to the Secretary of Health and Human Services regarding the program and activities carried out under the program, including such data and information as the Secretary shall require. Section 511(h)(2)(A) further states that the requirements for the MIECHV grants to tribes, tribal organizations, and urban Indian organizations are to be consistent, to the greatest extent practicable, with the requirements for grantees under the MIECHV program for states and jurisdictions.

The Administration for Children and Families, Office of Child Care, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, has awarded grants for the Tribal Maternal, Infant, and Early Childhood Home Visiting Program (Tribal Home Visiting). The Tribal Home Visiting discretionary grants support cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk tribal communities; establish, measure, and report on progress toward meeting performance measures in six legislatively-mandated benchmark areas; and conduct rigorous evaluation activities to build the knowledge base on home visiting among Native populations.

Tribal Home Visiting grantees have been notified that in every year of their grant, after the first year, they must comply with the requirement for submitting an Annual Report to the Secretary that should feature activities carried out under the program during the past reporting period and a final report to the Secretary during the final year of their grant. In order to assist grantees with meeting the requirements of the Annual and Final Report to the Secretary, ACF created guidance for grantees to use when writing their reports. The existing guidance (OMB Control No. 0970–0409, Expiration Date 10/31/18) provides sections where grantees must address the following:

- Update on Home Visiting Program Goals and Objectives
- Update on the Implementation of Home Visiting Program in Targeted Community(ies)

- Progress toward Meeting Legislatively Mandated Benchmark Requirements
- Update on Rigorous Evaluation Activities
- Home Visiting Program Continuous Quality Improvement (CQI) Efforts
- Administration of Home Visiting Program
- Technical Assistance Needs

The proposed data collection form is as follows:

ACF is requesting approval to renew and update the existing Tribal Home Visiting Guidance for Submitting an Annual or Final Report to the Secretary (OMB Control No. 0970–0409) that will include instructions for grantees to submit either an annual or final report on the progress of their program to the Secretary, depending on the reporting period.

Respondents: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Managers (The information collection does not include direct interaction with individuals or families that receive the services).

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Total responses	Average burden hours per response	Total annual burden hours
Annual/Final Report to the Secretary (depending on reporting period)	25	1	1	50	1250

Estimated Total Annual Burden Hours: 1,250.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office Planning, Research and Evaluation, 370 L'Enfant Promenade SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of theagency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–01705 Filed 1–29–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0129]

Evaluating Inclusion and Exclusion Criteria in Clinical Trials; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a public meeting entitled ''Evaluating Inclusion and Exclusion Criteria in Clinical Trials.'' Convened by the Duke-Robert J. Margolis, MD, Center for Health Policy at Duke University and supported by a cooperative agreement with FDA, the purpose of the public meeting is to bring the stakeholder community together to discuss a variety of topics related to eligibility criteria in clinical trials and their potential impact on patient access to investigational drugs, and how to facilitate the enrollment of a diverse patient population.

DATES: The public meeting will be held on April 16, 2018, from 8:30 a.m. to 5 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at the National Press Club, 529 14th St. NW, Washington, DC 20045. For additional travel and hotel information, please refer to the following website: *https://healthpolicy.duke.edu/events/evaluating-inclusion-and-exclusion-criteria-clinical-trials.* There will also be a live webcast for those unable to attend the meeting in person (see *Streaming Webcast of the Public Meeting*).

FOR FURTHER INFORMATION CONTACT: Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993, 301–796–2500, *Dianne.Paraoan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This public meeting implements FDA's mandate under section 610 of the FDA Reauthorization Act of 2017 to convene a public meeting to discuss clinical trial inclusion and exclusion criteria that will ultimately inform an FDA guidance on this subject. Among other things, the public meeting will include discussion about various ways in which participation in clinical trials can be improved, including through alternative trial designs and expanded access trials (see Section II. Topics for Discussion at the Public Meeting).

Inclusion of relevant subpopulations in drug development programs helps ensure that approved products will be safe and effective for the population likely to be treated when the drug is marketed. However, certain eligibility criteria in clinical trials can exclude patient subgroups, resulting in the enrollment of study populations that may not be fully representative of that broader patient population. FDA has and will continue its efforts to encourage greater diversity in clinical trial populations. For example, FDA regulations require marketing applications to provide analyses of safety and effectiveness by demographic and other relevant subgroups (see 21 CFR 314.50(d)(5)(v)). In addition, in 2016, FDA published guidance on the collection of race and ethnicity data in clinical trials (available on FDA's guidance web page at *https://www.fda.gov/downloads/*

regulatoryinformation/guidances/ucm126396.pdf).

II. Topics for Discussion at the Public Meeting

Topics for discussion during this meeting include:

- The risks and benefits of participation in clinical trials as well as potential regulatory, geographical, and socioeconomic barriers to participation.
- the rationale for eligibility criteria in clinical trials, as well as the impact of exclusion criteria on the enrollment of populations, such as infants, children, pregnant and lactating women, elderly, individuals with advanced disease, and individuals with co-morbid conditions.
- alternative clinical trial designs that may increase enrollment of more diverse patient populations, while facilitating the collection of data to establish safety and effectiveness.
- how appropriate patient populations can benefit from the results of trials that employ alternative designs.
- how changes to eligibility criteria may impact the complexity and length of clinical trials, as well as the strength of data necessary to demonstrate safety and effectiveness.
- opportunities for using data from expanded access trials.

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website: *https://healthpolicy.duke.edu/events/evaluating-inclusion-and-exclusion-criteria-clinical-trials.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by April 12, 2018, midnight Eastern Time. There will be no onsite registration. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. Duke-Margolis will post on its website if registration closes before the day of the public meeting.

If you need special accommodations due to a disability, please contact Sarah Supsiri at the Duke-Margolis Center for Health Policy, 202–791–9561, *sarah.supsiri@duke.edu,* no later than April 12, 2018.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast; archived video footage will be available at the Duke-Margolis website (*https://healthpolicy.duke.edu/events/evaluating-inclusion-and-exclusion-criteria-clinical-trials*) following the meeting. Organizations are requested to register all participants, but to view using one connection per location whenever possible. Webcast participants will be sent technical system requirements in advance of the event. Prior to joining the streaming webcast of the public workshop, we recommend that you review these technical system requirements in advance.

Transcripts: Please be advised that transcripts will not be available.

FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Meeting Materials: All event materials will be provided to registered attendees via email prior to the workshop and publicly available at the Duke-Margolis website: *https://healthpolicy.duke.edu/events/evaluating-inclusion-and-exclusion-criteria-clinical-trials.*

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01643 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–E–2082]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cardiomems HF Monitoring System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for CARDIOMEMS HF MONITORING SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 2, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 30, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 2, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 2, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for

information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–E–2082 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; CARDIOMEMS HF MONITORING SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993–0002, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device CARDIOMEMS HF MONITORING SYSTEM. CARDIOMEMS HF MONITORING SYSTEM is indicated for wirelessly measuring and monitoring pulmonary artery pressure and heart rate in New York Heart Association Class III heart failure patients who have been hospitalized for heart failure in the previous year. The hemodynamic data are used by physicians for heart failure management and with the goal of reducing heart failure hospitalizations. Subsequent to this approval, the USPTO received a patent term restoration application for CARDIOMEMS HF MONITORING SYSTEM (U.S. Patent No. 7,839,153) from CardioMEMS, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 15, 2015, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of CARDIOMEMS HF MONITORING SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for CARDIOMEMS HF MONITORING SYSTEM is 2,786 days. Of this time, 1,525 days occurred during the testing phase of the regulatory review period, while 1,261 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* October 13, 2006. FDA has verified the applicant's claim that the date the investigational device exemption required under section 520(g) of the FD&C Act for human tests to begin became effective October 13, 2006.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* December 15, 2010. The applicant claims December 14, 2010, as the date the premarket approval application (PMA) for CARDIOMEMS HF MONITORING SYSTEM (PMA P100045) was initially submitted. However, FDA records indicate that PMA P100045 was submitted on December 15, 2010.

3. *The date the application was approved:* May 28, 2014. FDA has verified the applicant's claim that PMA P100045 was approved on May 28, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,026 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence

during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01644 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–2521]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZEPATIER

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ZEPATIER and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 2, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 30, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 2, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 2, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–2521 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ZEPATIER.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product ZEPATIER (grazoprevir; elbasvir). ZEPATIER is indicated with or without ribavirin for treatment of chronic hepatitis C virus genotypes 1 or 4 infection in adults. Subsequent to this approval, the USPTO received a patent term restoration application for ZEPATIER (U.S. Patent No. 7,973,040) from Merck Sharp & Dohme Corp. and MSD Italia s.r.l., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 10, 2016, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ZEPATIER represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ZEPATIER is 1,865 days. Of this time, 1,619 days occurred during the testing phase of the regulatory review period, while 246 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* December 22, 2010. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 22, 2010.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* May 28, 2015. FDA has verified the applicant's claim that the new drug application (NDA) for ZEPATIER (NDA 208–261) was initially submitted on May 28, 2015.

3. *The date the application was approved:* January 28, 2016. FDA has verified the applicant's claim that NDA 208–261 was approved on January 28, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 188 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01642 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–2530]

Determination of Regulatory Review Period for Purposes of Patent Extension; GALLIPRANT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for GALLIPRANT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that animal drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and, ask for a redetermination by April 2, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 30, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 2, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 2, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–2530 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; GALLIPRANT.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA has approved for marketing the animal drug product GALLIPRANT (grapiprant). GALLIPRANT is indicated for the control of pain and inflammation associated with osteoarthritis in dogs. Subsequent to this approval, the USPTO received a patent term restoration application for GALLIPRANT (U.S. Patent No. 7,960,407) from AskAt Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 26, 2016, FDA advised the USPTO that this animal drug product had undergone a regulatory review period and that the approval of GALLIPRANT represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for GALLIPRANT is 1,688 days. Of this time, 1,636 days occurred during the testing phase of the regulatory review period, while 52 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* August 8, 2011. The applicant claims July 7, 2009, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the INAD effective date

was August 8, 2011, which was the date a major health or environmental effects test was begun.

2. *The date the application was initially submitted with respect to the animal drug product under section 512 of the FD&C Act (21 U.S.C. 360b):* January 29, 2016. The applicant claims January 25, 2016, as the date the new animal drug application (NADA) for GALLIPRANT (NADA 141–455) was initially submitted. However, FDA records indicate that NADA 141–455 was submitted on January 29, 2016.

3. *The date the application was approved:* March 20, 2016. The applicant claims that NADA 141–455 was approved on March 21, 2016, however, FDA records indicate that NADA 141–455 was approved on Sunday, March 20, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 899 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01640 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–7001]

Qualified Infectious Disease Product Designation Questions and Answers; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Qualified Infectious Disease Product Designation Questions and Answers.'' The Food and Drug Administration Safety and Innovation Act (FDASIA) creates incentives for the development of antibacterial and antifungal drug products that treat serious or life-threatening infections. The purpose of this draft guidance is to provide a resource for information on FDA's policies and procedures related to the designation of a qualified infectious disease product (QIDP).

DATES: Submit either electronic or written comments on the draft guidance by April 2, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–7001 for ''Qualified Infectious Disease Product Designation Questions and Answers; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For

more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Katherine Schumann, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6242, Silver Spring, MD 20993–0002, 301–796–1182.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Qualified Infectious Disease Product Designation Questions and Answers.'' Title VIII of FDASIA created the Generating Antibiotic Incentives Now (GAIN) provisions under section 505E of the Federal Food, Drug and Cosmetic Act (FD&C Act) (21 U.S.C. 355f). GAIN offers incentives for the development of antibacterial and antifungal drugs for human use to treat serious or life-threatening infections. The primary incentive contained in GAIN is a 5-year extension of exclusivity for which a QIDP-designated application qualifies upon approval under the FD&C Act. QIDPs also receive fast track designation at the sponsor's request (21 U.S.C. 356(b)(1)) and the first marketing application submitted for approval of a QIDP is granted priority review (21 U.S.C. 360n–1).

This draft guidance provides information on the implementation of GAIN and responses to common questions that might arise regarding QIDP designation and review of QIDP new drug applications.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on qualified infectious disease product designation questions and answers. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (PRA), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Qualified Infectious Disease Product Designation Questions and Answers.

Description: As described in the draft guidance, a sponsor may request a QIDP designation at any time prior to that sponsor's submission of a marketing application under section 505(b) of the FD&C Act (21 U.S.C. 355(b)) for that sponsor's drug product. A request for QIDP designation should be submitted either to an investigational new drug (IND) application or as pre-IND correspondence.

The cover letter for the QIDP designation request should include the following text in bold font at the top of the page: ''Request for Qualified Infectious Disease Product Designation Questions and Answers.'' Requests for multiple indications can be combined in a single submission or made separately. The sponsor should clearly identify each indication for which it is requesting QIDP designation.

As described further in the draft guidance, each request should include: (1) A discussion of the information that supports the role of the drug as an antibacterial or antifungal drug, for example, in vitro data, including any available data on mechanism of action; data from animal models of infection; (2) any available human data from phase 1, phase 2, or phase 3 studies; (3) the specific serious or life-threatening indication(s) for which the sponsor intends (or has begun) to develop the drug and the rationale or suitability for developing the drug for the proposed serious or life-threatening infection(s); and (4) the request may (but is not required to) include information to demonstrate that the product is an antibacterial or antifungal drug that has the capacity to treat a serious or life-threatening infection caused by either of the following: resistant pathogen(s), including novel or emerging infectious pathogens, and qualifying pathogens listed in 21 CFR 317.2.

We estimate that approximately 33 requests for QIDP designation, as described in the draft guidance, will be submitted annually by approximately 25 sponsors, and that it will take approximately 60 hours to prepare and submit each request.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Requests for a QIDP Designation	25	1.32	33	60	1,980

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov*.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01662 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–0482]

Determination of Regulatory Review Period for Purposes of Patent Extension; VIEKIRA PAK

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VIEKIRA PAK and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 2, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 30, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 2, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 2, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–0482 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VIEKIRA PAK.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the

heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product VIEKIRA PAK (ombitasvir, paritaprevir, dasabuvir, and ritonavir). VIEKIRA PAK with or without ribavirin is indicated for the treatment of patients with genotype 1 chronic hepatitis C virus infection including those with compensated cirrhosis. Subsequent to this approval, the USPTO received a patent term restoration application for VIEKIRA PAK (U.S. Patent No. 8,501,238) from AbbVie Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2016, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VIEKIRA PAK represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VIEKIRA PAK is 2,391 days. Of this time, 2,148 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* June 4, 2008. FDA has verified the applicant's claim that June 4, 2008, is the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* April 21, 2014. FDA has verified the applicant's claim that the new drug application (NDA) for VIEKIRA PAK (NDA 206619) was initially submitted on April 21, 2014.

3. *The date the application was approved:* December 19, 2014. FDA has verified the applicant's claim that NDA 206619 was approved on December 19, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 93 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01651 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–2519]

Determination of Regulatory Review Period for Purposes of Patent Extension; UPTRAVI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for UPTRAVI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 2, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 30, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late,

untimely filed comments will not be considered. Electronic comments must be submitted on or before April 2, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 2, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–2519 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; UPTRAVI.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product UPTRAVI (selexipag). UPTRAVI is indicated for the treatment of pulmonary arterial hypertension (PAH, WHO Group I) to delay disease progression and reduce the risk of hospitalization for PAH. Subsequent to this approval, the USPTO received a patent term restoration application for UPTRAVI (U.S. Patent No. 7,205,302) from Actelion Pharmaceuticals, Ltd., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 2, 2016, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of UPTRAVI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for UPTRAVI is 2,246 days. Of this time, 1,881 days occurred during the testing phase of the regulatory review period, while 365 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* October 29, 2009. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 29, 2009.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 22, 2014. FDA has verified the applicant's claim that the new drug application (NDA) for UPTRAVI (NDA 207947) was initially submitted on December 22, 2014.

3. *The date the application was approved:* December 21, 2015. FDA has verified the applicant's claim that NDA 207947 was approved on December 21, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,305 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01637 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2016–E–1582; FDA–2016–E–1236]

Determination of Regulatory Review Period for Purposes of Patent Extension; CRESEMBA—New Drug Aapplication 207500

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for CRESEMBA as approved under new drug application (NDA) 207500 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product as approved under NDA 207500.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 2, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 30, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 2, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 2, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2016–E–1582 and FDA–2016–E–1236 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; CRESEMBA—NDA 207500.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two

copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product CRESEMBA (isavuconazonium sulfate). CRESEMBA is indicated for use in the treatment of invasive aspergillosis and invasive mucormycosis. Subsequent to this approval, the USPTO received patent term restoration applications for CRESEMBA as approved under NDA 207500 (U.S. Patent Nos. 6,812,238 and 7,459,561) from Basilea Pharmaceutica International Ltd., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated July 28, 2016, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of CRESEMBA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for CRESEMBA is 3,528 days. Of this time, 3,286 days occurred during the testing phase of the regulatory review period, while 242 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* July 10, 2005. FDA has verified the applicant's claim that July 10, 2005, is the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* July 8, 2014. FDA has verified the applicant's claim that the new drug application (NDA) for CRESEMBA (NDA 207500) was initially submitted on July 8, 2014.

3. *The date the application was approved:* March 6, 2015. FDA has verified the applicant's claim that NDA 207500 was approved on March 6, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension based on NDA 207500, this applicant seeks 5 years or 1,264 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01645 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2016–E–2476; FDA–2016–E–2472]

Determination of Regulatory Review Period for Purposes of Patent Extension; LONSURF

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for LONSURF and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 2, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 30, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 2, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 2, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2016–E–2476 and FDA–2016–E–2472 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; LONSURF.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product.

Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product LONSURF (trifluridine and tipiracil hydrochloride). LONSURF is indicated for the treatment of patients with metastatic colorectal cancer who have been previously treated with fluoropyrimidine-, oxalplatin- and irinotecan-based chemotherapy, an anti-vascular endothelial growth factor biological therapy, and if RAS wild-type, an anti-epidermal growth factor receptor therapy. Subsequent to this approval, the USPTO received patent term restoration applications for LONSURF (U.S. Patent Nos. 6,479,500 and 7,799,783) from Taiho Pharmaceutical Co., Ltd., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated October 14, 2016, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of LONSURF represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for LONSURF is 6,083 days. Of this time, 5,805 days occurred during the testing phase of the regulatory review period, while 278 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* January 28, 1999. FDA has verified the Taiho Pharmaceutical Co., Ltd. claim that January 28, 1999, is the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b)/507 of the FD&C Act:* December 19, 2014. FDA has verified the applicant's claim that the new drug application (NDA) for LONSURF (NDA 207981) was initially submitted on December 19, 2014.

3. *The date the application was approved:* September 22, 2015. FDA has verified the applicant's claim that NDA 207981 was approved on September 22, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,827 days or 1,013 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01641 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2016–E–1279 and FDA–2016–E–1282]

Determination of Regulatory Review Period for Purposes of Patent Extension; SAPIEN 3 TRANSCATHETER HEART VALVE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for SAPIEN 3 TRANSCATHETER HEART VALVE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 2, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 30, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 2, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 2, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal*: *https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://*

www.regulations.gov will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

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• For written/paper comments submitted to the Dockets Management Staff Office, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2016–E–1279 and FDA–2016–1282 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; SAPIEN 3 TRANSCATHETER HEART VALVE.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff Office. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device SAPIEN 3 TRANSCATHETER HEART VALVE. SAPIEN 3 TRANSCATHETER HEART VALVE is indicated for relief of aortic stenosis in patients with symptomatic heart disease due to severe native calcific aortic stenosis who are judged by a heart team, including a cardiac surgeon, to be at high or greater risk for open surgical therapy (*i.e.,* Society of Thoracic Surgeons Operative Risk score 8 percent or at a 15 percent risk of mortality at 30 days). Subsequent to this approval, the USPTO received a patent term restoration application for SAPIEN 3 TRANSCATHETER HEART VALVE (U.S. Patent Nos. 7,585,321 and 8,591,575) from Edwards Lifesciences PVT, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated July 12, 2016, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of SAPIEN 3 TRANSCATHETER HEART VALVE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SAPIEN 3 TRANSCATHETER HEART VALVE is 1,736 days. Of this time, 1,558 days occurred during the testing phase of the regulatory review period, while 178 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* September 17, 2010. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on July 31, 2014. However, FDA records indicate that the

IDE was determined substantially complete for clinical studies to have begun on September 17, 2010, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* December 22, 2014. The applicant claims December 19, 2014, as the date the premarket approval application (PMA) for SAPIEN 3 TRANSCATHETER HEART VALVE (PMA P140031) was initially submitted. However, FDA records indicate that PMA P140031 was submitted on December 22, 2014.

3. *The date the application was approved:* June 17, 2015. FDA has verified the applicant's claim that PMA P140031 was approved on June 17, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 250 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01655 Filed 1–29–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the National Center for Advancing Translational Sciences Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Collaborative Innovation Award Review.

Date: February 22–23, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy I, Room 1068, 6701 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: M. Lourdes Ponce, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy I, Room 1073 Bethesda, MD 20892, 301–435–0810, *lourdes.ponce@nih.gov*.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Bench Testing.

Date: February 27, 2018.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, Democracy I, Room 1066, 6701 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Barbara J. Nelson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy I, Room 1080, Bethesda, MD 20892–4874, 301–435–0806, *nelsonbj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 25, 2018.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–01822 Filed 1–29–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; GEMSSTAR.

Date: February 26, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, *MIKHAILI@MAIL.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Primate Aging Database and Management.

Date: March 1, 2018.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, Suite 2W233, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anita H. Undale, Ph.D., MD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 240–747–7825, *anita.undale@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 24, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–01669 Filed 1–29–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Development and Maintenance of a Non-Human Primate Tissue Bank.

Date: March 1, 2018.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, Suite 2W233, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anita H. Undale, MD, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 240–747–7825, *anita.undale@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 24, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–01670 Filed 1–29–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—B, Review of T32 Applications.

Date: March 2, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, 45 Center Drive, Room 3AN18A, Bethesda, MD 20814, (301) 435–0965, *newmanla2@mail.nih.gov.*

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—A, Review of T32 Applications.

Date: April 9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 24, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–01671 Filed 1–29–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2017–0009]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0120

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change, of the following collection of information: 1625–0120, U.S. Coast Guard Non-appropriated Fund Employment Application. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before March 1, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2017–0009] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone

202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2017–0009], and must be received by March 1, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: [Insert OMB #s separated by a comma].

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (82 FR 48836, October 20, 2017) required by 44 U.S.C. 3506(c)(2). That Notice elicited two comments that were unrelated to the 60-day Notice. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: U.S. Coast Guard Non-appropriated Fund Employment Application.

OMB Control Number: 1625–0120.

Summary: The USCG Non-Appropriated Fund Employment Application form is used to collect applicant qualification information associated with vacancy announcements. The form allows individuals to apply for employment opportunities with the Coast Guard Non-appropriated Fund (NAF) workforce and fills the gap created by the cancellation of the Optional Application for Federal Employment, Form OF–612, OMB No. 3206–0219.

Need: The U.S. Coast Guard rates applicants under the authority of Title 5 of U.S. Code, Sections 301, 1104, 1302, 3301, and 3304. The Optional Application for Federal Employment, Form OF–612, was cancelled and the information is now collected in USA Jobs. The NAF personnel system does not utilize USA Jobs because of the high cost and high turnover rate and thus relied heavily on form OF–612 for applicants.

Forms: CG–1227B, Non-Appropriated Fund Employment Application.

Respondents: Public applying for positions with the USCG Non-appropriated Fund Workforce.

Frequency: Per vacancy announcements.

Hour Burden Estimate: The estimated burden has decreased from 8,400 hours to 3,837 hours a year due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: January 25, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018–01779 Filed 1–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2017–0125]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0121

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information without change: 1625–0121, United States Coast Guard Academy Introduction Mission Program Application and Supplemental Forms. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before March 1, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2017–0125] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT

MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2017–0125], and must be received by March 1, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0121.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (82 FR 55386, November 21, 2017) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: United States Coast Guard Academy Introduction Mission Program Application and Supplemental Forms.

OMB Control Number: 1625–0121.

Summary: This collection contains the application and all supplemental forms required to be considered as an applicant to the U.S. Coast Guard Academy Introduction Mission (AIM) Program.

Need: The information is needed to select applicants for participation in a one-week summer recruiting and training program for prospective Cadets interested in attending the U.S. Coast Guard Academy.

Forms: USCGA–AIM1, Travel update; USCGA–AIM2, Scholarship Request; USCGA–AIM3, Medical Release; Online Application; High School Transcript; and Personal Reference.

Respondents: Approximately 2,000 applicants apply annually to attend the AIM Program. Approximately 3,000 individuals will submit letters of recommendation for these applicants.

Frequency: Applicants must apply only once per year.

Hour Burden Estimate: The estimated burden is 9,000 annual hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: January 25, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018–01778 Filed 1–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2017–0902]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0020

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change, of the following collection of information: 1625–0020, Security Zones, Regulated Navigation Areas, and Safety Zones. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before March 1, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2017–0902] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532,

or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2017–0902], and must be received by March 1, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0020.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (82 FR 49636, October 26, 2017) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Security Zones, Regulated Navigation Areas, and Safety Zones.

OMB Control Number: 1625–0020.

Summary: The Coast Guard collects this information only when someone seeks a security zone, regulated navigation area, or safety zone. It uses the information to assess the need to establish one of these areas.

Need: Section 1226 and 1231 of 33 U.S.C. and 50 U.S.C. 191 and 195, and part 6 and 165 of 33 CFR give the Coast Guard Captain of the Port (COTP) the authority to designate security zones in the U.S. for as long as the COTP deems necessary to prevent damage or injury. Section 1223 of 33 U.S.C. authorizes the Coast Guard to prescribe rules to control vessel traffic in areas he or she deems hazardous because of reduced visibility, adverse weather, or vessel congestion. Section 1225 of 33 U.S.C. authorizes the Coast Guard to establish rules to allow the designation of safety zones where access is limited to authorized persons, vehicles, or vessels to protect the public from hazardous situations.

Forms: None.

Respondents: Federal, State, and local government agencies, owners and operators of vessels and facilities.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 413 hours to 178 hours a year due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: January 25, 2018.

James D. Roppel,

Acting Chief, U.S. Coast Guard, Office of Information Management.

[FR Doc. 2018–01730 Filed 1–29–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4345–DR; Docket ID FEMA–2018–0001]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4345–DR), dated October 16, 2017, and related determinations.

DATES: The change occurred on January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of William J. Doran III as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–01774 Filed 1–29–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of June 6, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 9, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Flagler County, Florida and Incorporated Areas Docket No.: FEMA–B–1644	
City of Bunnell	City Hall, 201 West Moody Boulevard, Bunnell, FL 32110.
City of Flagler Beach	City Hall, 105 South 2nd Street, Flagler Beach, FL 32136.
City of Palm Coast	City Hall, 160 Lake Avenue, Palm Coast, FL 32164.
Town of Beverly Beach	Town Hall, 2735 North Oceanshore Boulevard, Beverly Beach, FL 32136.
Town of Marineland	Marineland Town Office, 9507 North Oceanshore Boulevard, St. Augustine, FL 32080.
Unincorporated Areas of Flagler County	Flagler County Planning and Zoning Department, 1769 East Moody Boulevard, Building 2, Bunnell, FL 32110.
Wells County, North Dakota and Incorporated Areas Docket No.: FEMA–B–1671	
City of Harvey	City Hall, 120 West 8th Street, Harvey, ND 58341.
Unincorporated Areas of Wells County	Wells County Courthouse, 700 Railway Street North, Number 37, Fessenden, ND 58438.

[FR Doc. 2018–01766 Filed 1–29–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4355–DR; Docket ID FEMA–2018–0001]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4355–DR), dated January 2, 2018, and related determinations.

DATES: The declaration was issued January 2, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 2, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from a severe storm and flooding during the period of October 29 to November 1, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Belknap, Carroll, Coos, Grafton, and Sullivan Counties for Public Assistance.

All areas within the State of New Hampshire are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–01768 Filed 1–29–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4353–DR; Docket ID FEMA–2018–0001]

California; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4353–DR), dated January 2, 2018, and related determinations.

DATES: This amendment was issued January 12, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include Individual Assistance for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 2, 2018.

Los Angeles and San Diego Counties for Individual Assistance.

Santa Barbara and Ventura Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–01767 Filed 1–29–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4354–DR; Docket ID FEMA–2018–0001]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–4354–DR), dated January 2, 2018, and related determinations.

DATES: The declaration was issued January 2, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 2, 2018, the President issued a

major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from a severe storm and flooding during the period of October 29 to November 1, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maine have been designated as adversely affected by this major disaster:

Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, and York Counties for Public Assistance.

All areas within the State of Maine are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–01769 Filed 1–29–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4277–DR; Docket ID FEMA–2018–0001]

Louisiana; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4277–DR), dated August 14, 2016, and related determinations.

DATES: The change occurred on January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of William J. Doran III as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–01773 Filed 1–29–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3382–EM; Docket ID FEMA–2018–0001]

Louisiana; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA–3382–EM), dated August 28, 2017, and related determinations.

DATES: The change occurred on January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of William J. Doran III as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–01776 Filed 1–29–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4348–DR; Docket ID FEMA–2018–0001]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4348–DR), dated November 14, 2017, and related determinations.

DATES: This amendment was issued January 19, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 14, 2017.

Cayuga and Monroe Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–01777 Filed 1–29–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0004; OMB No. 1660–0085]

Agency Information Collection Activities: Proposed Collection; Comment Request; Crisis Counseling Assistance and Training Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Crisis Counseling Assistance and Training Program which provides funding in response to a State's request for crisis counseling services for a presidentially declared major disaster.

DATES: Comments must be submitted on or before April 2, 2018.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2018–0004. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Voorhies, Lead, Community Services Individual Assistance/Recovery, *jennifer.voorhies@fema.dhs.gov.* You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. 93–288, as amended) (''Stafford Act''), authorizes the President to provide professional counseling services, including financial assistance to States, U.S. Territories, Federally recognized Indian Tribal governments, local agencies or private mental health organizations for professional counseling services to survivors of major disasters to relieve mental health problems caused or aggravated by a major disaster or its aftermath. FEMA codified Section 416 of the Stafford Act at section 44 CFR 206.171 entitled Crisis Counseling Assistance and Training. Under Section 416 of the Stafford Act and 44 CFR 206.171, the President has designated the Department of Health and Human Services-Center for Mental Health Services (HHS–CMHS) to coordinate with FEMA in administering the Crisis Counseling Assistance and Training Program (CCP). FEMA and HHS–CMHS signed an interagency agreement under which HHS–CMHS provides program oversight, technical assistance and training to States applying for CCP funding.

FEMA is proposing to revise the collection by removing the option A from question 8 on the CCP/ISP Crisis Counseling Assistance and Training Program, Immediate Services Program Application/FEMA Form 003–0–1 and option A from question 12 on the CCP/RSP Crisis Counseling Assistance and Training Program, Regular Services Program Application/FEMA Form 003–0–2. The removal of this option from both forms will result in a minor hour burden reduction of 3.9 hours. FEMA welcomes input from the public on the removal of option A from both forms, which allows the State to use their own method to estimate the population to be served, as well as the estimated burden hour reduction of 3.9 hours.

Collection of Information

Title: Crisis Counseling Assistance and Training Program.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0085.

FEMA Forms: FEMA Form 003–0–1, Crisis Counseling Assistance and Training Program, Immediate Services Program Application; FEMA Form 003–0–2, Crisis Counseling Assistance and Training Program, Regular Services Program Application; SF–424, Application for Federal Assistance; SF–424A, Budget Information for Non-Construction Programs; SF–425, Federal Financial Report; HHS Checklist/08–2007; HHS Project Performance Site Location Form; ISP report narrative; Quarterly Report Narratives; Final RSP Report Narrative,.

Abstract: The CCP consists of two grant programs, the Immediate Services Program (ISP) and the Regular Services Program (RSP). The ISP and the RSP provide supplemental funding to States, U.S. Territories, and Federally recognized Tribes following a Presidentially-declared disaster. The grant programs provide funding for Training and Services, including community outreach, public education, and counseling techniques. States are required to submit an application that provides information on Needs Assessment, Plan of Service, Program Management, and an accompanying Budget.

Affected Public: State, local or Tribal government.

Estimated Number of Respondents: 150.

Estimated Number of Responses: 165.

Estimated Total Annual Burden Hours: 1511.1.

Estimated Total Annual Respondent Cost: $116,010.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $120,735.

Comments

Comments may be submitted as indicated in the ADDRESSES caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (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.

Dated: January 25, 2018.

William H. Holzerland,

Sr. Director for Information Management, Mission Support, Department of Homeland Security.

[FR Doc. 2018–01765 Filed 1–29–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3392–EM; Docket ID FEMA–2018–0001]

Louisiana; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA–3392–EM), dated October 6, 2017, and related determinations.

DATES: The change occurred on January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of William J. Doran III as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–01775 Filed 1–29–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G]

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 567 Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes. The list is updated from the notice published on January 17, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 3645–MIB, 1849 C Street NW, Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8. Published below is an updated list of federally acknowledged Indian Tribes in the contiguous 48 states and Alaska, to reflect various name changes and corrections.

Amendments to the list include name changes and name corrections. To aid in identifying tribal name changes and corrections, the Tribe's previously listed or former name is included in parentheses after the correct current tribal name. We will continue to list the Tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed Indian entities are acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers,

limitations, and obligations of such Tribes. We have continued the practice of listing the Alaska Native entities separately for the purpose of facilitating identification of them.

Dated: January 11, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Functions, Duties, and Responsibilities of the Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona)
Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas)
Alabama-Quassarte Tribal Town
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapaho Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians)
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California (previously listed as the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California)
Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California)
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California)
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California)
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon)
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahto Tribe of the Laytonville Rancheria
Cahuilla Band of Indians (previously listed as the Cahuilla Band of Mission Indians of the Cahuilla Reservation, California)
California Valley Miwok Tribe, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California;
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation
Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana)
Chitimacha Tribe of Louisiana
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho)
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish and Kootenai Tribes of the Flathead Reservation
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
Confederated Tribes of the Chehalis Reservation
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon)
Confederated Tribes of the Warm Springs Reservation of Oregon
Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon)
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon)
Cowlitz Indian Tribe
Coyote Valley Band of Pomo Indians of California
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Crow Tribe of Montana
Death Valley Timbi-sha Shoshone Tribe (previously listed as the Death Valley Timbi-Sha Shoshone Band of California)
Delaware Nation, Oklahoma
Delaware Tribe of Indians
Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California)
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians
Eastern Shawnee Tribe of Oklahoma
Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (previously listed as the Shoshone Tribe of the Wind River Reservation, Wyoming)
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota

Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California)
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington)
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California)
Houlton Band of Maliseet Indians
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Band of Miwuk Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California)
Jamestown S'Klallam Tribe
Jamul Indian Village of California
Jena Band of Choctaw Indians
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation
Karuk Tribe (previously listed as the Karuk Tribe of California)
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo)
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town
Kickapoo Traditional Tribe of Texas
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kiowa Indian Tribe of Oklahoma
Klamath Tribes
Kletsel Dehe Band of Wintun Indians (previously listed as the Cortina Indian Rancheria and the Cortina Indian Rancheria of Wintun Indians of California)
Koi Nation of Northern California (previously listed as the Lower Lake Rancheria, California)
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Indians, California (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California)
Los Coyotes Band of Cahuilla and Cupeno Indians, California (previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington)
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation
Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California)
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Indian Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut)
Mashpee Wampanoag Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.)
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Mohegan Tribe of Indians of Connecticut (previously listed as Mohegan Indian Tribe of Connecticut)
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Mission Indians, California (previously listed as the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington)
Narragansett Indian Tribe
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho)
Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington)
Nooksack Indian Tribe
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of the Shoshone Nation (previously listed as

Northwestern Band of Shoshoni Nation and the Northwestern Band of Shoshoni Nation of Utah (Washakie))
Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.)
Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota)
Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin)
Oneida Indian Nation (previously listed as the Oneida Nation of New York)
Onondaga Nation
Otoe-Missouria Tribe of Indians, Oklahoma
Ottawa Tribe of Oklahoma
Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Pala Band of Mission Indians (previously listed as the Pala Band of Luiseno Mission Indians of the Pala Reservation, California)
Pamunkey Indian Tribe
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Nation (previously listed as the Penobscot Tribe of Maine)
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (previously listed as the Pinoleville Rancheria of Pomo Indians of California)
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama)
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble S'Klallam Tribe (previously listed as the Port Gamble Band of S'Klallam Indians)
Potter Valley Tribe, California
Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas)
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation
Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington)
Ramona Band of Cahuilla, California (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California)
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria (previously listed as the Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California)
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California)
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Sac & Fox Tribe of the Mississippi in Iowa
Saginaw Chippewa Indian Tribe of Michigan
Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington)
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation)
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Band of Cahuilla Indians, California (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santee Sioux Nation, Nebraska
Sauk-Suiattle Indian Tribe
Sault Ste. Marie Tribe of Chippewa Indians, Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations))
Seneca Nation of Indians (previously listed as the Seneca Nation of New York)
Seneca—Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma)
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shinnecock Indian Nation
Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington)
Shoshone-Bannock Tribes of the Fort Hall Reservation

Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington)
Skull Valley Band of Goshute Indians of Utah
Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington)
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation
Squaxin Island Tribe of the Squaxin Island Reservation
St. Croix Chippewa Indians of Wisconsin
Standing Rock Sioux Tribe of North & South Dakota
Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington)
Stockbridge Munsee Community, Wisconsin
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation
Susanville Indian Rancheria, California
Swinomish Indian Tribal Community (previously listed as the Swinomish Indians of the Swinomish Reservation of Washington)
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria (previously listed as the Table Mountain Rancheria of California)
Tejon Indian Tribe
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
The Chickasaw Nation
The Choctaw Nation of Oklahoma
The Modoc Tribe of Oklahoma
The Muscogee (Creek) Nation
The Osage Nation (previously listed as the Osage Tribe)
The Quapaw Tribe of Indians
The Seminole Nation of Oklahoma
Thlopthlocco Tribal Town
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California)
Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York)
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington)
Tule River Indian Tribe of the Tule River Reservation, California
Tunica-Biloxi Indian Tribe
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah)
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah)
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Wilton Rancheria, California
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California (previously listed as the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona)
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California)
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas)
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Agdaagux Tribe of King Cove
Akiachak Native Community
Akiak Native Community
Alatna Village
Algaaciq Native Village (St. Mary's)
Allakaket Village
Alutiiq Tribe of Old Harbor (previously listed as Native Village of Old Harbor and Village of Old Harbor)
Angoon Community Association
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe
Atqasuk Village (Atkasook)
Beaver Village
Birch Creek Tribe
Central Council of the Tlingit & Haida Indian Tribes
Chalkyitsik Village
Cheesh-Na Tribe (previously listed as the Native Village of Chistochina)
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (previously listed as the Native Village of Chignik)
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Chuloonawick Native Village
Circle Native Community
Craig Tribal Association (previously listed as the Craig Community Association)
Curyung Tribal Council
Douglas Indian Association
Egegik Village
Eklutna Native Village
Emmonak Village
Evansville Village (aka Bettles Field)
Galena Village (aka Louden Village)
Gulkana Village
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council
Ivanof Bay Tribe (previously listed as the Ivanoff Bay Tribe and the Ivanoff Bay Village)
Kaguyak Village
Kaktovik Village (aka Barter Island)
Kasigluk Traditional Elders Council

Kenaitze Indian Tribe
Ketchikan Indian Corporation
King Island Native Community
King Salmon Tribe
Klawock Cooperative Association
Knik Tribe
Kokhanok Village
Koyukuk Native Village
Levelock Village
Lime Village
Manley Hot Springs Village
Manokotak Village
McGrath Native Village
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Naknek Native Village
Native Village of Afognak
Native Village of Akhiok
Native Village of Akutan
Native Village of Aleknagik
Native Village of Ambler
Native Village of Atka
Native Village of Barrow Inupiat Traditional Government
Native Village of Belkofski
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Native Village of Chignik Lagoon
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Native Village of Council
Native Village of Deering
Native Village of Diomede (aka Inalik)
Native Village of Eagle
Native Village of Eek
Native Village of Ekuk
Native Village of Ekwok (previously listed as Ekwok Village)
Native Village of Elim
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Native Village of Hamilton
Native Village of Hooper Bay
Native Village of Kanatak
Native Village of Karluk
Native Village of Kiana
Native Village of Kipnuk
Native Village of Kivalina
Native Village of Kluti Kaah (aka Copper Center)
Native Village of Kobuk
Native Village of Kongiganak
Native Village of Kotzebue
Native Village of Koyuk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
Native Village of Mekoryuk
Native Village of Minto
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Native Village of Nightmute
Native Village of Nikolski
Native Village of Noatak
Native Village of Nuiqsut (aka Nooiksut)
Native Village of Nunam Iqua (previously listed as the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Native Village of Ouzinkie
Native Village of Paimiut
Native Village of Perryville
Native Village of Pilot Point
Native Village of Pitka's Point
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Native Village of Ruby
Native Village of Saint Michael
Native Village of Savoonga
Native Village of Scammon Bay
Native Village of Selawik
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Native Village of Stevens
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Native Village of Teller
Native Village of Tetlin
Native Village of Tuntutuliak
Native Village of Tununak
Native Village of Tyonek
Native Village of Unalakleet
Native Village of Unga
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Native Village of Wales
Native Village of White Mountain
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Nikolai Village
Ninilchik Village
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Nulato Village
Nunakauyarmiut Tribe
Organized Village of Grayling (aka Holikachuk)
Organized Village of Kake
Organized Village of Kasaan
Organized Village of Kwethluk
Organized Village of Saxman
Orutsararmiut Traditional Native Council (previously listed as Orutsararmuit Native Village (aka Bethel))
Oscarville Traditional Village
Pauloff Harbor Village
Pedro Bay Village
Petersburg Indian Association
Pilot Station Traditional Village
Platinum Traditional Village
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Seldovia Village Tribe
Shageluk Native Village
Sitka Tribe of Alaska
Skagway Village
South Naknek Village
Stebbins Community Association
Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak)
Takotna Village
Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island))
Telida Village
Traditional Village of Togiak
Tuluksak Native Community
Twin Hills Village
Ugashik Village
Umkumiut Native Village (previously listed as Umkumiute Native Village)
Village of Alakanuk
Village of Anaktuvuk Pass
Village of Aniak
Village of Atmautluak
Village of Bill Moore's Slough
Village of Chefornak
Village of Clarks Point
Village of Crooked Creek
Village of Dot Lake
Village of Iliamna
Village of Kalskag
Village of Kaltag
Village of Kotlik
Village of Lower Kalskag
Village of Ohogamiut
Village of Red Devil
Village of Salamatoff
Village of Sleetmute
Village of Solomon
Village of Stony River
Village of Venetie (See Native Village of Venetie Tribal Government)
Village of Wainwright
Wrangell Cooperative Association
Yakutat Tlingit Tribe

Yupiit of Andreafski

[FR Doc. 2018–01907 Filed 1–29–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Public Meetings of the Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of a three day meeting of the Invasive Species Advisory Committee (ISAC).

DATES: Meeting of the Invasive Species Advisory Committee: Tuesday, February 27, 2018: 9:00 a.m. to 5:00 p.m.; Wednesday, February 28, 2018: 9:00 a.m. to 5:00 p.m.; Thursday, March 1, 2018; 9:00 a.m.–5:00 p.m.

ADDRESSES: Smithsonian Institution National Museum of the American Indian, 4th and Independence Avenue SW, Washington, DC 20560. The general session will be held in the Conference Center (4th Floor). **Note:** All meeting participants and interested members of the public must register their attendance online at *www.invasivespecies.gov.* Attendees must pass through security screening upon entering the facility.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Specialist and ISAC Coordinator, Phone: (202) 208–4122; Fax: (202) 208–4118, email: *Kelsey_Brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: Comprised of 12 non-federal members, the purpose of the Advisory Committee is to provide information and advice for consideration by the Council, as authorized by Executive Order 13112 as amended by Executive Order 13751. The National Invasive Species Council (NISC) is the interdepartmental body charged with providing the vision and leadership necessary to coordinate, sustain, and expand federal efforts to safeguard the interests of the United States through the prevention, eradication, and control of invasive species, as well as the restoration of ecosystems and other assets impacted by invasive species.

The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The purpose of this meeting is to convene the ISAC in a manner that enables it to provide information and advice for consideration by NISC on matters related to NISC priorities. The meeting will take place over a three day period with each day having a unique agenda that, collectively, enable a combination of public input and focused ISAC discussions that ultimately result in the provision of advice to NISC. The first day of the meeting (February 27th) will be carried out through a NISC Stakeholders Forum convened as two 2.5 hour public listening sessions that invite responses to the following questions from private sector, academic, and non-governmental perspectives (Session 1), as well as from state, territory, and tribal perspectives (Session 2):

1. How can NISC help advance cooperative federalism—an approach in which national, state, territorial, tribal, and local governments work together to solve our shared invasive species challenges—in order to better protect our nation's biodiversity, land and water resources, public health, and other assets?

2. How can NISC facilitate more effective partnerships with the private sector in order to reduce the risks of invasive species crossing U.S. borders?

3. What are the highest priority opportunities to streamline federal regulatory procedures to make it easier and more cost-effective for various sectors of society to prevent, eradicate, and control invasive species?

4. How can NISC facilitate the mobilization of non-native species data into public information systems in order to improve decision support capacities at all levels of government and for the private sector?

5. How can NISC foster the development and application of innovative tools and technologies to enable the prevention, eradication, and control of invasive species in a more timely and effective manner?

Written responses to these questions will be accepted from the public until the close of business on February 16, 2018. Correspondence should be directed to Kelsey Brantley at the address listed at the end of this notice. Electronic submission is strongly preferred. ISAC will consider these responses when preparing its advice to NISC.

On the second day of the meeting, ISAC members will work together to summarize the key findings from the NISC Stakeholders Forum and draft advice to the Council based on these findings. On the third day of the meeting, ISAC will present its preliminary findings and advice to a Federal and State Leadership Roundtable comprised of NISC members, state and territory Governors, and directors of selected multi-state associations. Roundtable participants will discuss ISAC's input and provide feedback to ISAC. ISAC will then meet to discuss the outcomes of the Roundtable and revise its findings and advice as deemed appropriate, with the intent of adopting an advisory Memorandum to NISC by the close of the meeting. The meeting agenda will be available on the NISC website at *http://www.invasivespecies.gov.* All reference materials will be posted on or about Tuesday, February 20, 2018.

Jamie K. Reaser,

Executive Director, National Invasive Species Council (NISC).

[FR Doc. 2018–01538 Filed 1–29–18; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP01000.L12200000.EA0000; AZ–SRP–AZA–036683]

Notice of Temporary Closure of Public Lands in Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that a temporary closure will be in effect on public lands administered by the Bureau of Land Management (BLM), Hassayampa Field Office, during the Vulture Mine Off-Road Challenge official permitted off-highway vehicle (OHV) race events.

DATES: These closures will be in effect from 2 p.m., February 9, 2018, through 10 p.m., February 11, 2018, Mountain Standard Time.

ADDRESSES: This temporary closure or restriction order will be posted in the Phoenix District Office, 21605 North 7th Avenue, Phoenix, AZ 85027. Maps of the affected area and other documents associated with this temporary closure are available at Hassayampa Field Office, which is located at the same address as the Phoenix District Office.

FOR FURTHER INFORMATION CONTACT: John (Jake) Szympruch, District Chief Ranger; telephone 623–580–5500; email: *jszympru@blm.gov;* or Rem Hawes, Hassayampa Field Office Manager; telephone 623–580–5500; email: *rhawes@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individuals during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question for the above

individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The temporary closure affects certain public lands within the Vulture Mine Recreation Management Zone in Maricopa County, Arizona. This action is being taken to help ensure public safety during the Vulture Mine Off-Road Challenge official permitted OHV race events.

The BLM will post temporary closure signs at main entry points to this area. This event is authorized on public land under a Special Recreation Permit, in conformance with the Wickenburg Travel Management Plan and the Bradshaw-Harquahala Record of Decision and Approved Resource Management Plan. Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following temporary closure and restrictions within Vulture Mine Recreation Zone.

Description of Race Course Closed Area: Areas subject to this temporary closure include all public lands situated within the interior of the race course as well as the race course. The race course begins at the intersection of BLM routes 9092F and 9090C traveling east along 9090C to 9090D going south and then east along 9090D to 9090; continue traveling along 9090 north to 9093A to 9274 traveling northeast to 9094, traveling southeast to 9195 to 9286, then traveling northeast to 9196, to 9192 then to route 9095 traveling north and west to 9089C to 9089A north to 9092B west to 9092 to 9092F and south returning to the beginning intersection with 9090C.

Closure: The designated race course and all areas within the boundary of the race course as described above are temporarily closed to public entry during the temporary closure.

Exceptions to Closure: The temporary closure does not apply to Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; persons with written authorization for the period of the race event from the BLM; and designated race officials, participants, pit crews, or persons operating on their behalf.

Enforcement: Any person who violates the temporary closure may be tried before a United States magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Arizona law.

Effect of Closure: The entire area encompassed by the designated race course and all areas within the race course as described above and in the time period as described above are temporarily closed to all public use, including pedestrian use and vehicles, unless specifically excepted as described above.

Authority: 43 CFR 8364.1.

Rem Hawes,

Field Manager.

[FR Doc. 2018–01764 Filed 1–29–18; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024298; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by March 1, 2018.

ADDRESSES: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Office of the State Archaeologist Bioarchaeology Program, Iowa City, IA. The human remains were removed from Grant and Richland Counties, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Citizen Potawatomi Nation, Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake), Fond du Lac Band, Grand Portage Band, Leech Lake Band, Mille Lacs Band, White Earth Band); Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa

Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Upper Sioux Community, Minnesota; and the Winnebago Tribe of Nebraska (hereafter referred to as ''The Consulted Tribes'').

Representatives of the Wahpekute Band of Dakota, a non-federally recognized group, were also involved in the consultation.

History and Description of the Remains

At an unknown date, human remains representing a minimum of five individuals were removed from an unknown location south of Potosi, in Grant County, WI. The human remains were collected from the bank of the Mississippi River by a high school student, and were donated to the Mississippi River Museum in Dubuque, IA, on June 12, 1975 (accession #75–83.2). These human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program in 1995. A middle-aged to old adult and an old adult, both of indeterminate sex, are represented by the human remains. Also present are three individuals aged 0.5 to 2.5 years, 5 to 9 years, and 9 to 15 years (Burial Project 910). No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from an unspecified mound, possibly near Garner Lake in Richland County, WI. The human remains were given to Richard Herrmann by Herman Bieg. At an unknown date, the human remains were donated to the Ham House Museum in Dubuque, IA. In 1986, the human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program. A female between the ages of 25 and 45 years is represented by the human remains. Cranial metrics and dental morphology support the identification of this individual as Native American (Burial Project 655). No known individual was identified. No associated funerary objects are present.

Osteological analyses indicate the human remains are Native American. However, these human remains cannot be dated or attributed to a particular archeological context in Wisconsin and cannot be affiliated with any present-day Indian Tribe or group.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on cranial metrics, dental morphology, and provenience.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 6 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of The Consulted Tribes.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Consulted Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Consulted Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Consulted Tribes may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: October 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editor's Note: This document was received at the office of the Federal Register On January 25, 2018.

[FR Doc. 2018–01711 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024745; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Natural History, Yale University, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Natural History has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Natural History at the address in this notice by March 1, 2018.

ADDRESSES: Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Natural History, Yale University, New Haven, CT. The human remains were removed from the Arikaree Fork of the Republican River, Cheyenne County, KS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal

agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Natural History professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

History and Description of the Remains

At some time prior to 1871, human remains representing, at minimum, one individual were removed from the Arikaree Fork of the Republican River in Cheyenne County, KS. The human remains, that of an adult male, were donated to the Peabody Museum in 1871 by Dr. W.H. King, the post surgeon stationed at Fort Wallace, KS. No known individual was identified. No associated funerary objects are present.

Peabody Museum records identify this individual as Native American and Arapaho. The condition of the human remains suggests cleaning occurred immediately after death, a common 19th century practice at U.S. military forts in the west. U.S. soldiers and fort personnel routinely collected the remains of recently deceased Native Americans to send back east for preservation in museums and universities. The treatment of these human remains is consistent with that practice.

At the time of donation, these human remains were identified as Arapaho. The descendants of the Arapaho of the 19th century are members of the Arapaho Tribe of the Wind River Reservation, Wyoming, and the Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma).

Determinations Made by the Peabody Museum of Natural History, Yale University

Officials of the Peabody Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Arapaho Tribe of the Wind River Reservation, Wyoming, and the Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752, by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Arapaho Tribe of the Wind River Reservation, Wyoming, and the Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma), may proceed.

The Peabody Museum of Natural History is responsible for notifying the Arapaho Tribe of the Wind River Reservation, Wyoming, and the Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma), that this notice has been published.

Dated: December 8, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–01729 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024613; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: History Colorado, Formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado, formerly Colorado Historical Society, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to History Colorado. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to History Colorado at the address in this notice by March 1, 2018.

ADDRESSES: Sheila Goff, NAGPRA Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of History Colorado, Denver, CO, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In the winter of 1888–1889, 13 cultural items were removed from burials in the Mesa Verde area in Montezuma County, CO, by Richard Wetherill, Al Wetherill, and Charlie Mason. The cultural items were removed from Cliff Palace, Spruce Tree, Square Tower, Balcony, Mummy, Spring, Long, Mug, High, Kodak, and Step Houses, and other cliff dwellings and mesa top ruins in Navajo, Acowitz, Johnson, Grass, Mancos, Weber, and Moccasin Canyons. History Colorado purchased the collection in 1889. The 13 unassociated funerary objects are 1 black-on-white bowl, 1 cotton cloth fragment, 4 turkey feather blankets or fragments, 1 cordage fragment, 2 arrow fragments, 3 willow reed burial mats, and 1 twill-plaited mat. The associated human remains were not collected. Based on material culture and site architecture, the sites where the objects were collected were occupied during

the Pueblo II–III periods, A.D. 900–1300.

In 1892, 59 cultural items were removed from burials in the Mesa Verde area in Montezuma County, CO, by Arthur Wilmarth, D.W. Ayers, and Al and/or Richard Wetherill. The cultural items were removed largely from Step House, but also from Cliff Palace, Tower, Balcony, Mug, Mummy, and Spruce Tree Houses. This collection was funded by the Colorado State Legislature to be part of Colorado's exhibit at the 1893 World's Columbian Exposition in Chicago. The collection was transferred to the Colorado Historical Society after the Exposition. The 59 unassociated funerary objects are 16 black-on-white bowls, 8 black-on-white or grayware jars, 4 black-on-white mugs, 7 black-on-white ladles, 2 black-on-white pot lids, 1 black-on-white effigy jar, 1 black-on-white canteen, 5 black-on-white pitchers, 1 bone awl, 2 wood pillows, 1 bow, 4 arrow fragments, 2 turkey feather blanket fragments, 3 willow reed burial mats, 1 twill-plaited mat fragment and 1 bone bead. The associated human remains were not collected. Based on material culture and site architecture, the sites where the objects were collected were occupied during the Pueblo II–III periods, A.D. 900–1300.

In the winter of 1888–1889 or in 1892, six cultural items were removed from burials in the Mesa Verde area in Montezuma County, CO, by the above collectors. Incomplete museum records do not allow determination of specifically who collected the cultural items. The six unassociated funerary objects are 1 piki mold, 1 turkey feather blanket, and 4 willow reed burial mats. Based on material culture, these artifacts were produced during the Pueblo II–III periods, A.D. 900–1300 or earlier.

In 1917, one cultural item was removed from a grave west of Golden in Jefferson County, CO, by staff from the State Highway Commission during work operations. The cultural item was transferred to History Colorado in 1918. The unassociated funerary object, 1 Olivella shell necklace, was identified as Ancestral Puebloan during consultations. The associated human remains were not removed.

Between 1921 and 1924, three cultural items were removed from a burial context in a pithouse on private property in Archuleta County, CO, by History Colorado Curator Jean A. Jeancon and Frank H.H. Roberts, an instructor at University of Denver, both of whom conducted archeological investigations at and around Chimney Rock Pueblo in Archuleta County, CO. The three unassociated funerary objects are 1 black-on-white mountain sheep figurine and 2 clay pipes. The associated human remains were not removed. Site architecture and material culture indicate the items were made sometime in the Pueblo I–III periods, A.D. 750–1300.

In 1928, 40 cultural items were removed from a burial context on private land known as Herren Farm (5MT726) in Montezuma County, CO, by Paul S. Martin. Mr. Martin was employed as a curator by History Colorado for archeological reconnaissance, survey and excavation in southwest Colorado. The 40 unassociated funerary objects are 2 corrugated cooking jars, 1 black-on-white jar, 12 black-on-white bowls, 16 black-on-white mugs, 6 black-on-white ladles, 1 black-on-white seed jar, 1 black-on-white pitcher, and 1 canine jaw. The associated human remains were not collected. Based on material culture and site architecture the site was occupied during the Pueblo II–III periods, A.D. 900–1300.

In 1928, 28 cultural items were removed from private land identified as Charnal House Tower in Montezuma County, CO, by Paul S. Martin. The 28 unassociated funerary objects are 11 corrugated cooking jars, 1 black-on-white jar, 3 black-on-white bowls, 5 black-on-white mugs, 1 black-on-white ladle, 1 black-on-white seed jar, 1 stone slab, 1 reed burial mat fragment, 1 bone necklace, 1 pair of shell earrings, and 2 stone pendants. The associated human remains were not collected. Based on material culture and site architecture the site was occupied during the Pueblo II–III periods, A.D. 900–1300.

In 1929, 17 cultural items were removed from a burial context on private land known as Little Dog Ruin (5MT13403) in Montezuma County, CO, by Paul S. Martin. The 17 unassociated funerary objects are 3 black-on-white seed jars, 5 black-on-white bowls, 4 black-on-white mugs, 1 black-on-white ladle, 1 black-on-white effigy jar, and 3 black-on-white pitchers. The associated human remains were not removed. Based on material culture and site architecture the site was occupied during the Basketmaker III and Pueblo I periods, A.D. 500–900.

In 1929, nine cultural items were removed from a burial context on private land known as Pigg Site (5MT4802) in Montezuma County, CO, by Paul S. Martin. The nine unassociated funerary objects are 2 black-on-white bowls, 1 black-on-red bowl, 3 black-on-white mugs, 1 black-on-white ladle, 1 black-on-white pot lid and 1 black-on-white seed jar. The associated human remains were not removed. Based on material culture and site architecture the site was occupied during the Pueblo II–III periods, A.D. 900–1300.

At some time prior to 1933, four cultural items were removed from a burial context at an unspecified site near Durango in La Plata County, CO, by Fred Johnson. The cultural items were donated to History Colorado in 1933. The four unassociated funerary objects are 1 grayware seed jar, 1 grayware bowl, 1 grayware pitcher and 1 sandstone concretion. The associated human remains were not removed. Pottery attributes indicate these were made during the Pueblo I–III periods, A.D. 750–1300.

At some time prior to 1935, 11 cultural items were removed from a burial context at an unspecified site on private property at the head of Yellow Jacket Canyon in Montezuma County, CO, by Homer S. Root, a minister from Durango, CO. In 1935, History Colorado purchased the cultural items. The 11 unassociated funerary objects are 5 black-on-white bowls, 4 black-on-white mugs, and 2 black-on-white ladles. Pottery attributes indicate the cultural items were made during the Pueblo III period, A.D. 1150–1300. The associated human remains were not removed.

At some time prior to 1935, 10 unassociated funerary objects were removed from a burial context at a burial context on an unspecified site on private property in Blue Mesa in La Plata County, CO, by Homer S. Root. In 1935, History Colorado purchased the cultural items. The 10 unassociated funerary objects are 4 black-on-white bowls, 1 grayware mug, 1 grayware jar, 1 grayware double vessel, and 3 grayware pitchers. The associated human remains were not removed. Pottery attributes indicate the cultural items were made during the Basketmaker III/Pueblo I periods, A.D. 500–900.

At some time prior to 1935, two unassociated funerary objects were removed from a burial context at an unspecified site on private property in Florida Mesa in La Plata County, CO, by Homer S. Root. In 1935, History Colorado purchased the cultural items. The two unassociated funerary objects are 1 grayware pitcher and 1 lot of Olivella shell beads. The associated human remains were not removed. Pottery attributes indicate the cultural items were made during the Basketmaker III/Pueblo I periods, A.D. 500–900.

At some time prior to 1935, nine unassociated funerary objects were removed from a burial context at an unspecified site on private property in

Wild Horse Canyon in La Plata County, CO, by Homer S. Root. In 1935, History Colorado purchased the cultural items. The nine unassociated funerary objects are 3 black-on-white bowls, 2 black-on-red bowls, 1 red ware jar, 2 grayware jars, and 1 grayware pitcher. The associated human remains were not removed. Pottery attributes indicate the cultural items were made during the Basketmaker III/Pueblo I periods, A.D. 500–900.

At some time prior to 1943, four cultural items were removed from burial contexts at unspecified sites in Colorado, New Mexico, Arizona, or Utah by James Mellinger. Mr. Mellinger willed his collection to History Colorado in 1943, and it was transferred to History Colorado in 1967. The four unassociated funerary objects are 1 grayware jar and 1 black-on-white bowl from Blue Mesa, CO, 1 turkey feather blanket from an unspecified site, and 1 twill-plaited basket from the Grand Gulch, UT, area. The associated human remains were not collected. Pottery attributes of two items indicate they were made in the Basketmaker/Pueblo I period, A.D. 500–900. The other two items lack sufficient context to date them.

At some time prior to 1956, two cultural items were removed from a burial context at an unspecified site in the Dove Creek area in Dolores County, CO, by Virgil Mathews. The cultural items were donated to History Colorado in 1956. The two unassociated funerary objects are 1 black-on-white pitcher, and 1 grayware bowl. The associated human remains were not collected. Pottery attributes of the two items indicate they were made in the Pueblo II period, A.D. 900–1150.

At some time prior to 1967, one cultural item was removed from a burial context at an unspecified site in Montezuma Canyon, San Juan County, UT, by an unknown person, later purchased by Vida Ellison, and willed to History Colorado in 1967 as part of an archeological collection. The one unassociated funerary object is 1 mud ware bowl. Pottery attributes indicate it was made in the Basketmaker III period, A.D. 500–750.

At some time prior to 1987, one cultural item was removed by an unknown person from a burial context at an unspecified site and accessioned into the History Colorado collection in 1987. The unassociated funerary object is 1 black-on-white seed jar. The associated remains were not collected. Pottery attributes indicate it was made in the Pueblo II period, A.D. 900–1150.

At an unknown date, two cultural items were removed from burial contexts at unspecified sites and placed into the History Colorado collection. The two cultural items are 1 turkey feather blanket fragment and 1 corrugated cooking jar. Attributes of both cultural items indicate they were made in the Pueblo I–III period, A.D. 750–1300.

The cultural affiliation of these unassociated funerary objects with present-day Native Americans was determined through the use of the following lines of evidence: geographical, kinship, biological, archeological, anthropological, linguistic, oral tradition, historical and expert opinion. Evidence was gathered from consultations with Indian Tribes, physical examination, survey of acquisition history, review of pertinent archeological, ethnographic, historic, anthropological and linguistic literature, and artifact analysis. Similarities in site architecture and material culture associated with the unassociated funerary objects are consistent with Ancestral Puebloan occupation of the southwestern United States, from the Basketmaker I period through the Pueblo III period (between approximately 1000 B.C. and A.D. 1300). Ancestral Puebloan ceramic typologies and perishables analyses helped to identify chronological and geographical technological traditions. After approximately A.D. 1300, multiple factors caused Pueblo populations to leave the Four Corners region and resettle in Pueblos along the Northern Rio Grande and in the Pueblos of Acoma, Zuni, Ysleta del Sur, and Hopi. Extant oral traditions corroborate dynamic population movements within the region during this time.

Determinations Made by History Colorado

Officials of History Colorado have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), and based on existing museum documentation, the 222 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas); and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Culturally Affiliated Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Sheila Goff, NAGPRA Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us,* by March 1, 2018. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to The Culturally Affiliated Tribes may proceed.

History Colorado is responsible for notifying the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas); and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: November 1, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–01724 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024672; PCU00RP14.R50000–PPWOCRADN0]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Indian Affairs, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Bureau of Indian Affairs. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Bureau of Indian Affairs at the address in this notice by March 1, 2018.

ADDRESSES: Anna Pardo, Museum Program Manager/NAGPRA Coordinator, Bureau of Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, email *Anna.Pardo@bia.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1950, 12 cultural items were removed from burial contexts in an unnamed ruin in Mancos Canyon, Montezuma County, CO, located on Indian trust lands. Original field notes taken by Cliff Chappell state: ''Large Ruin in Mancos Canyon, 12 ½ miles from Gallup rd. just below picture rock. Ward Emerson & Myself. 4/28/50. Dug by Cliff Chappell. [Artifacts 525A through 525G] found loose in the 1st ruin 4 ½ miles from Gallup rd. at Leimbach picnic site S. of rd.'' In 1983, the Anasazi Historical Society (AHS) purchased the ''Chappell Collection'' from the Chappell family and the collection was placed on loan by the AHS at the Bureau of Land Management—Anasazi Heritage Center. In 2016, these 12 items were identified as being removed from burial contexts on Indian lands. The Bureau of Indian Affairs asserted control of the items and notified potentially affiliated Tribes. The 12 unassociated funerary objects are 1 ceramic bowl, 2 ceramic pitchers, 1 stone spindle whorl, 2 chert side-notched projectile points, 3 stone pendant blanks, 1 hammerstone, 1 tether stone, and 1 piece of unworked petrified wood.

Archeological findings indicate that the Hopi are the direct descendants of the Prehistoric Ancestral Puebloan inhabitants of the Four Corners region. Published accounts of Hopi oral traditions say that ancestors of some Hopi clans migrated from north and east of the Hopi Mesas, including the general vicinity of Mancos Canyon and the Mesa Verde region, either directly or indirectly by way of the Eastern Pueblos. Migrations of people from the Eastern Pueblos to Hopi are substantiated in the archeological record and in ethnohistorical accounts. The puebloan ruins of Montezuma County show the greatest affinity to the Mesa Verde branch. (*Cultural Affiliation Study for Canyons of the Ancients National Monument, Southwest Colorado,* Gilpin, et al. 2002:121). The Hopi Cultural Preservation Office of the Hopi Tribe asserts cultural affiliation to these objects.

Determinations Made by the Bureau of Indian Affairs

Officials of the Bureau of Indian Affairs have determined that*:*

- Pursuant to 25 U.S.C. 3001(3)(B), the 12 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe of Arizona.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Bureau of Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, email *Anna.Pardo@bia.gov,* by March 1, 2018. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Hopi Tribe of Arizona may proceed.

The Bureau of Indian Affairs is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: November 15, 2017.

Sarah Glass,

Acting Manager, National NAGPRA Program.

[FR Doc. 2018–01727 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024522; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA, and Central Washington University, Ellensburg, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum (Burke

Museum) and Central Washington University (CWU) have completed an inventory of human remains and an associated funerary object, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and associated funerary object and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and this associated funerary object should submit a written request to the Burke Museum or CWU. If no additional requestors come forward, transfer of control of the human remains and associated funerary object to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and this associated funerary object should submit a written request with information in support of the request to the Burke Museum or Central Washington University at the address in this notice by March 1, 2018.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 x2, email *plape@uw.edu,* or Lourdes Henebry-DeLeon, Department of Anthropology, Central Washington University, 400 East University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *Lourdes.Henebry-DeLeon@cwu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated funerary object under the control of the Burke Museum, University of Washington, Seattle, WA, and Central Washington University, Ellensburg, WA. The human remains and associated funerary object were removed from Birch Bay, Whatcom County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Burke Museum and Central Washington University professional staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation and the Nooksack Indian Tribe.

History and Description of the Remains

In 1933, human remains representing, at minimum, two individuals were removed from Birch Bay in Whatcom County, WA. The human remains and an associated funerary object were removed from a ''shell heap'' by David Eastman, and were donated to the Burke Museum in 1933 (Burke Accn. #2658). In 1974, the Burke Museum transferred the human remains to Central Washington University (CWU ID #BO). No known individuals were identified. The one associated funerary object is a bone wedge, and it is still in the possession of the Burke Museum.

Birch Bay, located near the Canadian border, has several large documented archeological shell midden sites. The bone wedge funerary object is consistent with burial practices in this area, as bone and antler wedges have been found in association with burials from other sites. The human remains have been determined to be Native American based on osteological and archeological evidence.

Information provided during consultations shows Birch Bay to be an important area within the traditional aboriginal territory of the Lummi Tribe. Historical and anthropological sources state that Birch Bay was inhabited by the Semiahmoo, also referred to as the Birch Bay Indians (Amoss, 1978; Ruby et al, 1986; Spier, 1936; Suttles, 1951 & 1990; Swanton, 1952). The Semiahmoo people relocated to the Lummi Reservation and across the border into Canada (Ruby et al, 1986; Suttles, 1951). There is a clear cultural affiliation between these human remains and the Semiahmoo people. Today the Semiahmoo are represented by the Lummi Tribe of the Lummi Reservation. Other information provided during consultation indicates that Birch Bay is also of importance to the Nooksack people, who have a cultural connection to the bay and utilized it for resource procurement.

Determinations Made by the Burke Museum and Central Washington University

Officials of the Burke Museum and Central Washington University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Lummi Tribe of the Lummi Reservation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and this associated funerary object should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 x2, email *plape@uw.edu,* or Lourdes Henebry-DeLeon, Department of Anthropology, Central Washington University, 400 East University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *Lourdes.Henebry-DeLeon@cwu.edu,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to the Lummi Tribe of the Lummi Reservation may proceed.

The Burke Museum is responsible for notifying the Lummi Tribe of the Lummi Reservation and the Nooksack Indian Tribe that this notice has been published.

Dated: October 23, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: This document was received at the Office of the Federal Regiater on January 25, 2018.

[FR Doc. 2018–01722 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024429; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arkansas Archeological Survey, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arkansas Archeological Survey has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Arkansas Archeological Survey. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Arkansas Archeological Survey at the address in this notice by March 1, 2018.

ADDRESSES: Dr. George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, (479) 575–3556, *gsabo@uark.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Arkansas Archeological Survey, Fayetteville, AR The human remains were removed from multiple locations in the State of Arkansas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Arkansas Archeological Survey professional staff in consultation with representatives of The Osage Nation (previously listed as the Osage Tribe). These human remains were inventoried and documented by Physical Anthropologists at the University of Arkansas.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3BA61 in Baxter County, AR, and were donated to the Arkansas Archeological Survey in 1994. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3BA61 indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from the area of Osage Creek in Benton County, AR, and were donated to the Arkansas Archeological Survey in 2000. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in Benton County indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3BE5 in Benton County, AR, and were donated to the Arkansas Archeological Survey in the 1980s. The remains were not identified as human until 2017. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3BE5 indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 2012, human remains representing, at minimum, one individual were recovered from the Breckenridge Shelter site (3CR2) in Carroll County, AR. These remains were identified as human in 2017. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at the Breckenridge Shelter site indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 1987, human remains representing, at minimum, one individual were recovered from site 3MA2 in Madison County, AR. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3MA2 indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 1987, human remains representing, at minimum, one individual were recovered from site 3MA9 in Madison County, AR. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3MA9 indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, two individuals were recovered from the 3 Mile Cave site in Washington County, AR, and were donated to the Arkansas Archeological Survey in 1976. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found in Washington County indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 1986, human remains representing, at minimum, one individual were recovered from site 3WA582 in Washington County, AR. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in Washington County indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, two individuals were recovered from an unknown site in Northwest Arkansas, and were donated to the Arkansas Archeological Survey in 1994. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found in Northwest Arkansas indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from an unknown area in Northwest Arkansas, and were donated to the Arkansas Archeological Survey in 1994. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in Northwest Arkansas indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from an unknown area in North Central

Arkansas, and were donated to the Arkansas Archeological Survey in 2017. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in North Central Arkansas indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

This notice includes a variety of terms commonly used in discussions of Arkansas archeology and the historical trajectories that gave rise to specific Native American communities identified in the historical record. Based on the archeological context for these sites and what is presently known about the peoples who pre-date the historic Osage people and occupied the sites listed in this notice, the Arkansas Archeological Survey has determined the human remains listed in this notice are culturally affiliated with The Osage Nation (previously listed as the Osage Tribe).

Determinations Made by the Arkansas Archeological Survey

Officials of the Arkansas Archeological Survey have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 13 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Osage Nation (previously listed as the Osage Tribe).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, (479) 575–3556, *gsabo@uark.edu,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Osage Nation (previously listed as the Osage Tribe) may proceed.

The Arkansas Archeological Survey is responsible for notifying The Osage Nation (previously listed as the Osage Tribe) that this notice has been published.

Dated: October 11, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: This document was received at the Office of the Federal Register on January 25, 2018.

[FR Doc. 2018–01716 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024602; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Alibates Flint Quarries National Monument, Fritch, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Alibates Flint Quarries National Monument has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Alibates Flint Quarries National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Alibates Flint Quarries National Monument at the address in this notice by March 1, 2018.

ADDRESSES: Robert Maguire, Superintendent, Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, TX 79036, telephone (806) 857–3151, email *robert_maguire@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Alibates Flint Quarries National Monument, Fritch, TX. The human remains and associated funerary objects were removed from Hutchinson and Potter Counties, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Alibates Flint Quarries National Monument.

Consultation

A detailed assessment of the human remains was made by Alibates Flint Quarries National Monument professional staff in consultation with representatives of the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Halapai Indian Tribe of the Hualaupai Indian Reservation, Arizona; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pawnee Nation of Oklahoma; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; and Wichita and Affiliated

Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma (hereafter referred to as ''The Consulted Tribes'').

The following Tribes were invited to consult but did not participate in the face-to-face consultation meeting: Arapaho Tribe of the Wind River Reservation, Wyoming; Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California); Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California); Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Tonto Apache Tribe of Arizona; Walker River Paiute Tribe of the Walker River Reservation, Nevada; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

In 1965, human remains representing, at minimum, three individuals were removed from Arrowhead Peak Ruin in Hutchinson County, TX. No known individuals were identified. No associated funerary objects are present.

In 1967, human remains representing, at minimum, one individual were removed from site LAMR84 in Potter County, TX. No known individual was identified. The 48 associated funerary objects are 15 pot sherds, 15 pieces of debitage, 10 faunal bone fragments, 1 hammerstone, 2 bags of charcoal samples, 2 bags of soil samples, 1 lithic, 1 snail shell, and 1 shell pendant fragment.

In 1969, human remains representing, at minimum, five individuals were removed from site 41MO37 in Moore County, TX. No known individuals were identified. No associated funerary objects are present.

In 1976, human remains representing, at minimum, one individual were removed from Alibates Ruin No. 28 in Potter County, TX. No known individual was identified. No associated funerary objects are present.

All of the sites are attributed to the Plains Panhandle Aspect/Antelope Creek phase (A.D. 1150–1450). Anthropological literature, archeological data, and tribal oral histories identify these peoples as being ancestral to the Pawnee Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Determinations Made by Alibates Flint Quarries National Monument

Officials of Alibates Flint Quarries National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 48 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Pawnee Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Robert Maguire, Superintendent, Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, TX 79036, telephone (806) 857–3151, email *robert_maguire@nps.gov,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Pawnee Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma, may proceed.

Alibates Flint Quarries National Monument is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: November 1, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–01725 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024430; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arkansas Archeological Survey, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arkansas Archeological Survey has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal

descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Arkansas Archeological Survey. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Arkansas Archeological Survey at the address in this notice by March 1, 2018.

ADDRESSES: Dr. George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, (479) 575–3556, *gsabo@uark.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Arkansas Archeological Survey, Fayetteville, AR. The human remains and associated funerary objects were removed from multiple locations in the State of Arkansas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Arkansas Archeological Survey professional staff in consultation with representatives of The Quapaw Tribe of Indians, Oklahoma. The human remains were inventoried and documented by Physical Anthropologists at the University of Arkansas.

History and Description of the Remains

In 2017, human remains representing, at minimum, one individual were recovered on the bank of the Arkansas River in Southeast Arkansas. These human remains were determined to be of Native American descent and were transferred to the Arkansas Archeological Survey. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found along the Arkansas River indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 1999, human remains representing, at minimum, four individuals were recovered during a salvage excavation from site 3CY455 in Clay County, AR. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at site 3CY455 indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 2008, human remains representing, at minimum, one individual were recovered from site 3CN4 in Conway County, AR. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3CN4 indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3CG21 in Craighead County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3CG21 indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 2008, human remains representing, at minimum, three individuals were recovered during a salvage excavation from the Krebs site (3CG453) in Craighead County, AR. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at the Krebs site (3CG453) indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 1991, human remains representing, at minimum, four individuals were recovered from the Mound Place site (3CT1) in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at the Mound Place site (3CT1) indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

In 1991, human remains representing, at minimum, four individuals were recovered from site 3CT6 in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at site 3CT6 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

In 1985, human remains representing, at minimum, six individuals were recovered from site 3CT6'E' in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at site 3CT6'E' indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, two individuals were recovered from site 3CT7 in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at site 3CT7 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

In 1980 and 1983, human remains representing, at minimum, seven individuals were recovered from the Beck site (3CT8) in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individuals were identified. The six associated funerary objects include one Mississippi Plain jar, one Bell Plain bowl, one Mississippi Plain bowl, two Bell Plain bottles, and one celt. Diagnostic artifacts found at the Beck site (3CT8) indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3CT9 in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts

found at site 3CT9 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3CT10 in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3CT10 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, ten individuals were recovered from site 3CT13 in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individuals were identified. The three associated funerary objects include two Bell Plain bottles and one Bell Plain lobed jar. Diagnostic artifacts found at site 3CT13 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, ten individuals were recovered from the Belle Meade site (3CT30) in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individual was identified. The four associated funerary objects include two large Mississippi Plain bowls, one reconstructed Mississippi Plain jar, and one Bell Plain bowl (2016–551). Diagnostic artifacts found at the Belle Meade site (3CT30) indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, two individuals were recovered from the Edmondson site (3CT33) in Crittenden County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at the Edmonson site (3CT33) indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3CS'A' in Cross County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in Cross County indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, two individuals were recovered from the Rose Mound site (3CS27) in Cross County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2016. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at the Rose Mound site (3CS27) indicate that these human remains were probably buried during the Parkin Phase (A.D. 1350–1550).

At an unknown date, human remains representing, at minimum, one individual were recovered from the Parkin site (3CS29) in Cross County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at the Parkin site (3CS29) indicate that these human remains were probably buried during the Parkin Phase (A.D. 1350–1550).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3CS64 in Cross County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3CS64 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

In 2009, human remains representing, at minimum, five individuals were recovered from the Harter Knoll site (3IN54) in Independence County, AR. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at the Harter Knoll site (3IN54) indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

In 2016, human remains representing, at minimum, one individual were recovered from site 3IZ319 in Izard County, AR. These human remains were determined to be of Native American descent by the State Medical Examiner, and were transferred to the Arkansas Archeological Survey. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in Izard County indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, two individuals were recovered from an unknown location in Lawrence County, AR, and were donated to the Arkansas Archeological Survey in 2016. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found in Lawrence County indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3LW461 in Lawrence County, AR, and were donated to the Arkansas Archeological Survey in 2016. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3LW461 indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3LE7 in Lee County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3LE7 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, five individuals were recovered from the Clay Hill site (3LE11) in Lee County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at the Clay Hill site (3LE11) indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, three individuals were recovered from the Starkley site (3LE17) in Lee County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at the Starkley site (3LE17) indicate that these human remains were probably buried

during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3LE19 in Lee County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3LE19 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3MS'C' in Mississippi County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in Mississippi County indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 1998, human remains representing, at minimum, one individual were recovered from site 3MS5 in Mississippi County, AR. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3MS5 indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3MS16 in Mississippi County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3MS16 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

In 2016, human remains representing, at minimum, one individual were recovered from site 3MS45 in Mississippi County, AR. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3MS45 indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, five individuals were recovered from the Knappenberger site (3MS53) in Mississippi County, AR, and were donated to the Arkansas Archeological Survey in 1998. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found at the Knappenberger site (3MS53) indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3MS62 in Mississippi County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3MS62 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

In 2016, human remains representing one individual were recovered from Perry County, AR. These human remains were determined to be of Native American descent by the State Medical Examiner, and were transferred to the Arkansas Archeological Survey. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in Perry County indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3SF3 in St. Francis County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3SF3 indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3SF4 in St. Francis County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3SF4 indicate that these human remains were probably buried during the Mississippi Period (A.D. 950–1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3SF9 in St. Francis County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2016. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3SF9 indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3SF25 in St. Francis County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2016. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3SF25 indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from the Sycamore Landing area in St. Francis County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2016. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in St. Francis County indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, one individual were recovered from the Sycamore Bend Plantation area in St. Francis County, AR, and were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013 and 2016. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in St. Francis County indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, three individuals were recovered from an unknown area in Northeast Arkansas by the Memphis Archaeological and Geological Society. These human remains were transferred from the University of Memphis to the Arkansas Archeological Survey in 2013. No known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found in Northeast Arkansas indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

At an unknown date, human remains representing, at minimum, three individuals were recovered from an unknown area in the State of Arkansas, and were donated to the Arkansas Archeological Survey in 2017. No

known individuals were identified. No associated funerary objects were present. Diagnostic artifacts found in Arkansas indicate that these human remains were probably buried sometime during the Prehistoric Period (11,650 B.C.–A.D. 1541).

Quapaw communities occupied villages located around the confluence of the Arkansas and Mississippi Rivers at the time of late 17th century French exploration. The earliest collections listed on the NIC appear to be from Archaic contexts. Already during the Mississippi period (A.D. 950–1541), though, distinctive local groups emerge in the archeological record that correspond in geographical extent and cultural cohesiveness to present-day groups that include the Quapaw.

This notice includes a variety of terms commonly used in discussions of Arkansas archeology and the historical trajectories that gave rise to specific Native American communities identified in the historical record. Based on the archeological context for these sites and what is presently known about the peoples who pre-date the historic Quapaw people and occupied the sites listed in this notice, the Arkansas Archeological Survey has determined the human remains listed in this notice are culturally affiliated with The Quapaw Tribe of Indians.

Determinations Made by the Arkansas Archeological Survey

Officials of the Arkansas Archeological Survey have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 104 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 13 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Quapaw Tribe of Indians.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, (479) 575–3556, *gsabo@uark.edu,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Quapaw Tribe of Indians may proceed.

The Arkansas Archeological Survey is responsible for notifying The Quapaw Tribe of Indians that this notice has been published.

Dated: October 11, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: This document was received at the Office of The Federal Register on January 25, 2018.

[FR Doc. 2018–01717 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024341; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: Arkansas Archeological Survey, Fayetteville, AR; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Arkansas Archeological Survey has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on December 22, 2014. This notice corrects the number of associated funerary objects listed in that notice. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request to the Arkansas Archeological Survey. If no additional requestors come forward, transfer of control of associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to the Arkansas Archeological Survey at the address in this notice by March 1, 2018.

ADDRESSES: George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, telephone (479) 575–3556.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Arkansas Archeological Survey. The human remains and associated funerary objects were removed from multiple counties in the State of Arkansas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal Agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects published in Notice of Inventory Completion in the **Federal Register** (79 FR 76351–76361, December 22, 2014). An additional funerary object was recently identified among the collections. To date, transfer of control of the associated funerary objects has not occurred.

Correction

In the **Federal Register** (79 FR 76354, December 22, 2014), column 2, paragraph 1, sentence 3, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

The one associated funerary object is a partially reconstructed Mississippi Plain jar.

In the **Federal Register** (79 FR 76355, December 22, 2014), column 1, paragraph 5, under the heading ''History and Description of the Remains,'' is corrected by adding the following sentence:

No associated funerary objects are present.

In the **Federal Register** (79 FR 76361, December 22, 2014), column 3, paragraph 3, under the heading ''Determinations made by the Arkansas Archeological Survey,'' is corrected by substituting the number ''274'' with the number ''275''.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to George Sabo, Director, Arkansas

Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, telephone (479) 575–3556, by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to the Quapaw Tribe of Indians may proceed.

The Arkansas Archeological Survey is responsible for notifying the Quapaw Tribe of Indians that this notice has been published.

Dated: October 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: This document was received at the Office of the Federal Register on January 25, 2018.

[FR Doc. 2018–01719 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024586; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Alibates Flint Quarries National Monument, Fritch, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Alibates Flint Quarries National Monument has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Alibates Flint Quarries National Monument. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Alibates Flint Quarries National Monument at the address in this notice by March 1, 2018.

ADDRESSES: Robert Maguire, Superintendent, Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, TX 79036, telephone (806) 857–3151, email *robert_maguire@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Alibates Flint Quarries National Monument, Fritch, TX. The human remains were removed from Alibates Flint Quarries National Monument, Potter County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Alibates Flint Quarries National Monument.

Consultation

A detailed assessment of the human remains was made by Alibates Flint Quarries National Monument professional staff in consultation with representatives of the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pawnee Nation of Oklahoma; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma (hereafter referred to as ''The Consulted Tribes'').

The following Tribes were invited to consult but did not participate during a region-wide, multi-park process: Arapaho Tribe of the Wind River Reservation, Wyoming; Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California); Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California); Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New

Mexico; Pueblo of Zia, New Mexico; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Tonto Apache Tribe of Arizona; Walker River Paiute Tribe of the Walker River Reservation, Nevada; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

In 1980, human remains representing, at minimum, one individual were removed from site 41HC167 in Hutchinson County, TX, by Wes Phillips of the National Park Service and Meeks Etchieson. Previous collections from 41HC167 have shown it to be an archaic site. No known individual was identified. No associated funerary objects are present.

Determinations Made by Alibates Flint Quarries National Monument

Officials of Alibates Flint Quarries National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Comanche Nation, Oklahoma; and Kiowa Indian Tribe of Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Robert Maguire, Superintendent, Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, TX 79036, telephone (806) 857–3151, email *Robert_Maguire@nps.gov,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona, may proceed.

Alibates Flint Quarries National Monument is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: October 31, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–01723 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024479; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Robert S. Peabody Museum of Archaeology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Robert S. Peabody Museum of Archaeology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Robert S. Peabody Museum of Archaeology at the address in this notice by March 1, 2018.

ADDRESSES: Dr. Ryan J. Wheeler, Robert S. Peabody Museum of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The human remains and associated funerary objects were removed from the Hornblower II and Abel's Hill sites in Dukes County, MA.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Wampanoag Repatriation Confederacy, representing the Mashpee Wampanoag Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah), as well as the Assonet Band of the Wampanoag Nation (a non-federally recognized Indian group).

History and Description of the Remains

In 1982, human remains representing, at minimum, one individual were removed from the Hornblower II site in Aquinnah, Dukes County, MA, by James J. Richardson III and James B. Petersen. The human remains are fragmentary, likely as a result of being impacted by earth-moving equipment. The human remains were transferred to the Robert S. Peabody Museum of Archaeology on November 12, 2012. The individual is an adult male, aged 30–45 years old. No known individual was identified. The 189 associated funerary objects are 1 unidentified bird bone; 3 unidentified mammal bone; 1 quartz core frag; 1 rhyolite biface fragment; 114 quartz flakes; 1 quartz flake; 3 pottery sherds; 1 bag of burial pit floatation sample, including soil, pebbles, shell, and animal bone fragments; 1 large quartz nodule; 3 bone or tree bark fragments; 1 large chunk white quartz; 8 marine shells and soil from feature fill; 1 large quartz flake; 1 possible lithic tool; and 49 quartz flakes.

Information about the Hornblower II site is found in William A. Ritchie's 1969 book ''The Archaeology of Martha's Vineyard: A Framework for the Prehistory of Southern New England,'' and in field notes by James J. Richardson III and James B. Petersen, on file at the Robert S. Peabody Museum of Archaeology, and in the files of the Massachusetts Historical Commission (site #19–DK–44). The Hornblower II site is a shell mound located on the north shore of Squibnocket Pond on Martha's Vineyard, with midden deposits ranging from two to nearly four feet in thickness over approximately 3,400 square feet. Ritchie's excavations in the 1960s documented four major strata. Radiocarbon dates and artifacts found during the 1960s and 1980s excavations indicate occupation from the Archaic through the Late Woodland periods, approximately 5,500 to 500 years ago. No burials were identified during Ritchie's excavations. James J. Richardson reports that the human burial was discovered outside of the midden area during the 1982 excavations. The burial was found during shovel testing to delimit the site boundaries. Human remains were observed in Test Pit #11, and a five-foot-square excavation unit designated N70E25 was made to recover the human remains. The field notes state that ''it now appears to have been a primary flexed burial heading southwest, facing southeast toward Squibnocket Pond.'' The notes also state that the burial was in a shallow pit that was difficult to discern due to disturbance by plowing. According to the excavators, the pit had originally been used for cooking. Physical anthropologist Harley A. Erickson made an inventory of the human remains in October of 2014, noting that the appearance and morphology of the human remains are consistent with Native American ancestry. In the 1980s, the original excavators submitted samples of marine shell found in association with the burial for radiocarbon dating, but the results were inconclusive. Artifacts found in the burial pit indicate a Late Woodland period date.

Sometime in the 1980s, human remains representing, at minimum, one individual were removed from an unrecorded site at Abel's Hill in Chilmark, Dukes County, MA, by James B. Richardson III and Richard Burt on behalf of the Chilmark Police Department. The human remains are nearly complete, and are in a good state of preservation. They were transferred to the Robert S. Peabody Museum of Archaeology on November 12, 2012. The individual is an adult male, aged 24–30 years old. No known individual was identified. No associated funerary objects are present.

Very little documentation is available on the Abel's Hill site. James B. Richardson III relates that the burial was discovered during the excavation of a septic system at a private residence in the 1980s. The location was not a known archeological site. The Chilmark Police Department contacted avocational archeologist Richard Burt, who, with assistance from James B. Richardson III, excavated the burial. The human remains were retained by Richardson and curated with material from the Hornblower II site, prior to transfer to the Robert S. Peabody Museum of Archaeology in 2012. Physical anthropologist Harley A. Erickson made an inventory of the remains in October of 2014, noting strong morphological traits on the cranial and postcranial remains consistent with Native American ancestry.

The Hornblower II and Abel's Hill sites lie within the homeland of the Wampanoag (see Frank Speck, ''Territorial Subdivisions and Boundaries of the Wampanoag, Massachusett, and Nauset Indians, Indian Notes and Monographs No. 44'' (1928), Bert Salwen, ''Indians of Southern New England and Long Island: Early Period'' in ''Handbook of North American Indians: Northeast,'' (Bruce G. Trigg, ed., 1978), and Robert S. Grumet, ''Historic Contact: Indian Peoples and Colonists in Today's Northeastern United States in the Sixteenth through Eighteenth Centuries,'' 117–121, 129–133 (1995)). Linguistically, this area is within the so-called n-dialect shared by Massachusett, Wampanoag, and Pokanoket speakers (see Kathleen J. Bragdon, ''Native Peoples of Southern New England, 1650–1775,'' 22–23 (2009)). The coastal groups already in this area by the Late Woodland period (circa A.D. 1000) or even the Late Archaic, are likely the ancestors of the Wampanoag people encountered by the English in the seventeenth century. Geography, archeology, linguistics, oral tradition, and history provide multiple lines of evidence that demonstrate longstanding ties between the Wampanoag and the area around Aquinnah and Chilmark and affirm affiliation with the burials at the Hornblower II and Abel's Hill sites.

Determinations Made by the Robert S. Peabody Museum of Archaeology

Officials of the Robert S. Peabody Museum of Archaeology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 189 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Mashpee Wampanoag Tribe

(previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.) and Wampanoag Tribe of Gay Head (Aquinnah).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Ryan J. Wheeler, Robert S. Peabody Museum of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Mashpee Wampanoag Indian Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah), and, if joined to one or more of the culturally affiliated tribes, the Assonet Band of the Wampanoag Nation, a non-federally recognized Indian group, may proceed.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Wampanoag Repatriation Confederacy, representing the Mashpee Wampanoag Indian Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah), as well as the Assonet Band of the Wampanoag Nation (a non-federally recognized Indian group) that this notice has been published.

Dated: October 16, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: This document was received at the Office of the Federal Register on January 25, 2018.

[FR Doc. 2018–01721 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024474: PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Grand Rapids Public Museum, Grand Rapids, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Grand Rapids Public Museum in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Grand Rapids Public Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Grand Rapids Public Museum at the address in this notice by March 1, 2018.

ADDRESSES: Andrea Melvin, Grand Rapids Public Museum, 272 Pearl Street NW, Grand Rapids, MI 49504, telephone (616) 929–1700, email *amelvin@grpm.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of The Osage Nation (previously listed as the Osage Tribe) that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

At an unknown date, six cultural items were removed from an unknown location in either southern Missouri or Arkansas. The cultural items were acquired by the Grand Rapids Public Museum on September 10, 1974, as a bequest from the Ruth Herrick Estate (Collection T–420 (B24)). The six objects of cultural patrimony comprise the contents of a ''Medicine Man's Bundle'' and include 1 lot of human and animal teeth, 1 lot of unworked river stones, 1 lot of shell fragments, 1 weathered antler, 1 partial projectile point, and 1 lead bullet.

The objects are not typically associated with burials, but are consistent with material excavated from village locations. Museum records indicate the ''Medicine Man's Bundle'' was originally bought from a dealer with the understanding they were from an archeological excavation conducted prior to 1965. A determination of Osage cultural affiliation is based on museum records, consultation, geographic location, and archeological information. Based on consultation, the contents of Osage bundles were and are of ongoing cultural importance to the Osage Nation, cannot be alienated by any single individual, and require protection and extremely limited exposure.

Determinations Made by the Grand Rapids Public Museum

Officials of the Grand Rapids Public Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the six cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and The Osage Nation (previously listed as the Osage Tribe).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Andrea Melvin, Grand Rapids Public Museum, 272 Pearl Street NW, Grand Rapids, MI 49504, telephone (616) 929–1700, email *amelvin@grpm.org,* by March 1, 2018. After that date, if no additional claimants have come forward, transfer of control of the objects of cultural patrimony to The Osage Nation (previously listed as the Osage Tribe) may proceed.

The Grand Rapids Public Museum is responsible for notifying The Osage Nation (previously listed as the Osage Tribe) that this notice has been published.

Dated: October 13, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: This document was received for publication by the Office of the Federal Register on January 25, 2018.

[FR Doc. 2018–01714 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024729; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: The Museum of Anthropology at Washington State University, Pullman, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Museum of Anthropology at Washington State University has corrected a Notice of Intent to Repatriate published in the **Federal Register** on July 24, 2017. This notice corrects the cultural affiliation determination. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Museum of Anthropology at Washington State University. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Museum of Anthropology at Washington State University at the address in this notice by March 1, 2018.

ADDRESSES: Mary Collins, Director Emeritus, Museum of Anthropology at Washington State University, Pullman, WA 99164–4910, telephone (509) 592–6929, email *collinsm@wsu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Museum of Anthropology at Washington State University, Pullman, WA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation determination published in a Notice of Intent to Repatriate in the **Federal Register** (82 FR 34331–34332, July 24, 2017). Additional information in the form of Nez Perce Tribal Resolution NP71–29 of 1971 was found in the Nez Perce Tribal Archives. This document was a response to Washington State University's request for approval for archeological excavations at site 45AS8. The terms of the Resolution include that artifacts found in graves would become the property of the Nez Perce Tribe. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (82 FR 34332, July 24, 2017) column 1, paragraph 4, under the heading ''Determinations Made by the Museum of Anthropology at Washington State University,'' is corrected by substituting the following paragraph:

> Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho).

In the **Federal Register** (82 FR 34332, July 24, 2017) column 1, paragraph 5, sentence 2, under the heading ''Additional Requestors and Disposition,'' is corrected by substituting the following sentence:

> After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Nez Perce Tribe (previously listed as the Nez Perce tribe of Idaho) may proceed.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Mary Collins, Director Emeritus, Museum of Anthropology at Washington State University, Pullman, WA 99164–4910, telephone (509) 592–6929, email *collinsm@wsu.edu,* by March 1, 2018. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho) may proceed.

The Museum of Anthropology at Washington State University is responsible for notifying the Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho) and the Confederated Tribes of the Colville Reservation that this correction notice has been published.

Dated: December 4, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–01728 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024431; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arkansas Archeological Survey, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arkansas Archeological Survey has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Arkansas Archeological Survey. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Arkansas Archeological Survey at the address in this notice by March 1, 2018.

ADDRESSES: Dr. George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, (479) 575–3556, *gsabo@uark.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Arkansas Archeological Survey, Fayetteville, AR. The human remains were removed from Drew County, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Arkansas Archeological Survey professional staff in consultation with representatives of the Tunica-Biloxi Indian Tribe. These human remains were inventoried and documented by Physical Anthropologists at the University of Arkansas.

History and Description of the Remains

In 1983, human remains representing, at minimum, two individuals were recovered from site 3DR144 in Drew County, AR. No known individuals were identified. No associated funerary objects were present.

This notice includes a variety of terms commonly used in discussions of Arkansas archeology and the historical trajectories that gave rise to specific Native American communities identified in the historical record. Based on the archeological context for these sites and what is presently known about the peoples who pre-date the historic Tunica people and occupied the sites listed in this notice, the Arkansas Archeological Survey has determined the human remains listed in this notice are culturally affiliated with the Tunica-Biloxi Indian Tribe.

Determinations Made by the Arkansas Archeological Survey

Officials of the Arkansas Archeological Survey have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 2 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Tunica-Biloxi Indian Tribe.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, (479) 575–3556, *gsabo@uark.edu,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Tunica-Biloxi Indian Tribe may proceed.

The Arkansas Archeological Survey is responsible for notifying the Tunica-Biloxi Indian Tribe that this notice has been published.

Dated: October 11, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: This document was received at the Office of the Federal Register on January 25, 2018.

[FR Doc. 2018–01718 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024413; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Robert S. Peabody Museum of Archaeology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Robert S. Peabody Museum of Archaeology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Robert S. Peabody Museum of Archaeology at the address in this notice by March 1, 2018.

ADDRESSES: Ryan Wheeler, Robert S. Peabody Museum of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Robert S. Peabody Museum of Archaeology, Andover, MA. The human remains and associated funerary objects were removed from the Swanton site (VT–FR–1) in Franklin County, VT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians); Houlton Band of Maliseet Indians; Passamaquoddy Tribe; Penobscot Nation (previously listed as the Penobscot Tribe of Maine); and the following non-federally recognized Indian groups: Abenaki Nation of Missisquoi, St. Francis/Sokoki Band; Elnu Tribe of the Abenaki; Koasek Traditional Band of the Koas Abenaki Nation; and Nulhegan Abenaki Tribe.

History and Description of the Remains

In the 1860s, human remains representing, at minimum, one individual were removed by Elliot Frink, H.H. Dean, L.B. Truax, John W.

Brough, J.B. Perry, and others from the Swanton site (VT–FR–1) located at Highgate, near Swanton, Franklin County, VT. The site also is known as Hemp Yard, Frink cemetery, and Frink's grounds. In 1917, the human remains and associated funerary objects were given to the Phillips Academy Department of Archaeology (now the Robert S. Peabody Museum of Archaeology) by John W. Brough. Information about the site can be found in Warren K. Moorehead's 1922 book ''A Report on the Archaeology of Maine'' (see pages 241–257, which deal with Moorehead's Lake Champlain survey). Archeologist Stephen Loring, in his 1985 article ''Boundary Maintenance, Mortuary Ceremonialism and Resource Control in the Early Woodland: Three Cemetery Sites in Vermont,'' indicates that the Swanton site was first mentioned in 1868 by the Reverend J.B. Perry, following its exposure by logging, mining, and erosion activities in the early 1860s. Loring describes the Swanton site as part of an Early Woodland-era mortuary complex that included exotic funerary objects, large bifacial stone blades, and the use of red ochre. The mortuary complex is approximately 2,000 to 3,000 years old. Examination of the human remains by physical anthropologist Michael J. Gibbons in 1993 identified a subadult male, aged 17 to 20 years old at time of death, represented by fragmentary clavicle and mandible, both of which are copper stained (object ID numbers 58495 and 58496). No known individual was identified. The 66 associated funerary objects include 1 discoidal stone (16937), 1 large stemmed slate biface (58480), 1 quartz stemmed biface (58482), 1 waterworn stemmed slate biface (58483), 1 leaf-shaped chert biface (58485), 1 leaf-shaped chert biface (58486), 1 fragmentary quartz biface (58488), 1 large jasper biface (58489), 1 polishing stone of slate (58490), 1 rhyolite celt (58491), 1 groundstone celt (58492), 3 large shell beads (58493), 2 small shell beads (58494), 1 phyllite gorget (58497), 1 decorated ceramic rim sherd (58498), 1 copper drill or perforator (58499), 1 fragmentary quartz biface (58501), 4 fragmentary chipped stone tools (58503), 35 fragments of copper beads, some with preserved cordage (2017.2.1), 5 tubular beads, and 2 Common Atlantic Marginella (*Prunum apicinum*) beads (2017.2.2).

During consultation representatives of the Wabanaki Tribes and Abenaki groups emphasized that they considered themselves collectively to be Wabanakis, with similar languages, shared cultural histories, and common origins that extend far back to the first human occupation of the far northeastern United States and parts of Canada. Abenaki scholar Frederick Wiseman, in his book ''Reclaiming the Ancestors: Decolonizing a Taken Prehistory of the Far Northeast,'' presents detailed information on the interrelatedness of the Wabanaki, their distinct regional adaptations, and modern political entities. Multiple lines of evidence guided by tribal consultations, including geographic location, maps, oral tradition, linguistic, and archeological data, demonstrate a shared group identity between the human remains and associated funerary objects in this notice and the Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians); Houlton Band of Maliseet Indians; Passamaquoddy Tribe; Penobscot Nation (previously listed as the Penobscot Tribe of Maine); and the following non-federally recognized Indian groups: Abenaki Nation of Missisquoi, St. Francis/Sokoki Band; Elnu Tribe of the Abenaki; Koasek Traditional Band of the Koas Abenaki Nation; and Nulhegan Abenaki Tribe.

Determinations Made by the Robert S. Peabody Museum of Archaeology

Officials of the Robert S. Peabody Museum of Archaeology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 1 individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 66 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians); Houlton Band of Maliseet Indians; Passamaquoddy Tribe; and the Penobscot Nation (previously listed as the Penobscot Tribe of Maine).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ryan Wheeler, Robert S. Peabody Museum of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects may proceed to the Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians); Houlton Band of Maliseet Indians; Passamaquoddy Tribe; Penobscot Nation (previously listed as the Penobscot Tribe of Maine); and, if joined to one or more of the culturally affililated tribes, any of the following non-federally recognized Indian groups: Abenaki Nation of Missisquoi, St. Francis/Sokoki Band; Elnu Tribe of the Abenaki; Koasek Traditional Band of the Koas Abenaki Nation; and Nulhegan Abenaki Tribe.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians); Houlton Band of Maliseet Indians; Passamaquoddy Tribe; Penobscot Nation (previously listed as the Penobscot Tribe of Maine); Abenaki Nation of Missisquoi (St. Francis/Sokoki Band), Elnu Tribe of the Abenaki, Koasek Traditional Band of the Koas Abenaki Nation, and Nulhegan Abenaki Tribe that this notice has been published.

Dated: October 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: This document was received at the Office of the Federal Register on January 25, 2018.

[FR Doc. 2018–01720 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024526; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Thomas Gilcrease Institute of American History and Art, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Gilcrease Institute of American History and Art (Gilcrease Museum), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of a sacred object and object of cultural patrimony. Lineal descendants or

representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Gilcrease Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Gilcrease Museum at the address in this notice by March 1, 2018.

ADDRESSES: Laura Bryant, Anthropology Collections Manager, Thomas Gilcrease Institute of American History and Art, 1400 North Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Gilcrease Museum that meets the definition of a sacred object and object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In the early to mid-1900s, one cultural item was removed from an unknown location, likely in Alaska, and was purchased by Thomas Gilcrease, whose collection founded the Gilcrease Museum. The exact circumstances of how the purchase was made, including whether a dealer or gallery was involved, are unknown. The one sacred object and object of cultural patrimony is a Chilkat robe made from mountain goat wool and cedar bark and depicting a Killer Whale crest, which the Central Council of the Tlingit and Haida Indian Tribes identified as belonging to the Dak'laweidi Clan.

During consultation, representatives of the Central Council of the Tlingit and Haida Indian Tribes stated that Dak'laweidi Clan property cannot be transferred, conveyed, or alienated unless all members of the Clan agree, and therefore, no one individual had the legal right to alienate the Killer Whale Chilkat robe. They also stated that Killer Whale Chilkat robes also are contemporarily worn at traditional ceremonies and potlatches, and play an important role in funerary rites. This usage was confirmed by the Kootznoowoo Cultural and Educational Foundation and independent scholars. The Dak'laweidi Clan provided photographic evidence of an identical Killer Whale Chilkat robe being worn by Mr. Mark Jacobs, Sr., and of Mr. Frank Paul, Sr., dancing in a similar Chilkat robe and a Killer Whale hat.

Determinations Made by the Gilcrease Museum

Officials of the Gilcrease Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and object of cultural patrimony and the Central Council of the Tlingit and Haida Indian Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Laura Bryant, Gilcrease Museum, 1400 North Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu,* by March 1, 2018. After that date, if no additional claimants have come forward, transfer of control of the sacred object and object of cultural patrimony to the Central Council of the Tlingit and Haida Indian Tribes may proceed.

The Gilcrease Museum is responsible for notifying the Central Council of the Tlingit and Haida Indian Tribes that this notice has been published.

Dated: October 23, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: The Office of the Federal Register received this notice on January 25, 2018.

[FR Doc. 2018–01712 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024408; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Natural History, Yale University, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Natural History, Yale University, has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Natural History at the address in this notice by March 1, 2018.

ADDRESSES: Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Natural History, Yale University, New Haven, CT. The human remains were removed

from a mound near Fort Totten, Benson County, ND.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Natural History professional staff in consultation with representatives of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota, and the Spirit Lake Tribe, North Dakota.

History and Description of the Remains

Sometime prior to 1887, human remains representing, at minimum, one individual were removed from a mound near Fort Totten, Benson County, ND, and were donated to the Peabody Museum in 1887. The human remains represent an adult, approximately 30–45 years old. No known individual was identified. No associated funerary objects are present.

Determinations Made by the Peabody Museum of Natural History

Officials of the Peabody Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the preponderance of evidence, including collection history and osteological markers.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- Pursuant to 25 U.S.C. 3001 (15), the land from which the Native American human remains were removed is the tribal land of the Spirit Lake Tribe, North Dakota.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Spirit Lake Tribe, North Dakota.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752, by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Spirit Lake Tribe, North Dakota, may proceed.

The Peabody Museum of Natural History is responsible for notifying the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota, and the Spirit Lake Tribe, North Dakota, that this notice has been published.

Dated: October 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editor's Note: This document was received at the office of the Federal Register on January 25, 2018.

[FR Doc. 2018–01710 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024428; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arkansas Archeological Survey, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arkansas Archeological Survey has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Arkansas Archeological Survey. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Arkansas Archeological Survey at the address in this notice by March 1, 2018.

ADDRESSES: Dr. George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, (479) 575–3556, *gsabo@uark.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Arkansas Archeological Survey, Fayetteville, AR. The human remains were removed from multiple locations in the State of Arkansas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Arkansas Archeological Survey professional staff in consultation with representatives of the Caddo Nation of Oklahoma. The human remains were inventoried and documented by Physical Anthropologists at the University of Arkansas.

History and Description of the Remains

In 1970, human remains representing, at minimum, one individual were recovered from the Weber site (3CL2) in Clark County, AR. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at the Weber site indicate that these human remains were probably buried during the Middle Caddo Period (A.D. 1300–1450).

At an unknown date, human remains representing, at minimum, one individual were recovered from the Saline Bayou site (3CL24) in Clark County, AR, and were donated to the Arkansas Archeological Survey in 1974. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at the Saline Bayou site indicate that these human remains were probably buried during the Middle Caddo Period (A.D. 1300–1450).

At an unknown date, human remains representing, at minimum, one individual were recovered from the

Moore Mound site (3CL56) in Clark County, AR. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at the Moore Mound site indicate that these human remains were probably buried during the Middle Caddo Period (A.D. 1300–1450).

At an unknown date, human remains representing, at minimum, one individual were recovered from site 3CL63 in Clark County, AR, and were donated to the Arkansas Archeological Survey in 1973. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at site 3CL63 indicate that these human remains were probably buried during the Middle Caddo Period (A.D. 1300–1450).

In 2016, human remains representing, at minimum, one individual were recovered from Hempstead County, AR. The Arkansas State Medical Examiner determined these human remains to be of Native American descent. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found in Hempstead County indicate that these human remains were probably buried during the Prehistoric Period (11,650 B.C.–A.D. 1541).

In 2014, human remains representing, at minimum, one individual were recovered from the Dragover site (3MN298) in Montgomery County, AR. No known individual was identified. No associated funerary objects were present. Diagnostic artifacts found at the Dragover site indicate that these human remains were probably buried between A.D. 1475–1525.

This notice includes a variety of terms commonly used in discussions of Arkansas archeology and the historical trajectories that gave rise to specific Native American communities identified in the historical record. Based on the archeological context for these sites and what is presently known about the peoples who pre-date the historic Caddo people and occupied the sites listed in this notice, the Arkansas Archeological Survey has determined the human remains listed in this notice are culturally affiliated with the Caddo Nation of Oklahoma.

Determinations Made by the Arkansas Archeological Survey

Officials of the Arkansas Archeological Survey have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 6 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Caddo Nation of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, (479) 575–3556, *gsabo@uark.edu,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Caddo Nation of Oklahoma may proceed.

The Arkansas Archeological Survey is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: October 11, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: This document was received at the Office of the Federal Register on January 25, 2018.

[FR Doc. 2018–01715 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024472; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Grand Rapids Public Museum, Grand Rapids, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Grand Rapids Public Museum has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Grand Rapids Public Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Grand Rapids Public Museum at the address in this notice by March 1, 2018.

ADDRESSES: Andrea Melvin, Grand Rapids Public Museum, 272 Pearl Street NW, Grand Rapids, MI 49504, telephone (616) 929–1700, email *amelvin@grpm.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Grand Rapids Public Museum, Grand Rapids, MI. The human remains were removed from Barry County, MO, and an unknown location in the State of Arkansas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Grand Rapids Public Museum professional staff in consultation with representatives of The Osage Nation (previously listed as the Osage Tribe).

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location in the State of Arkansas. The human remains were acquired by the Grand Rapids Public Museum on September 10, 1974, as a bequest from the Ruth Herrick Estate (Collection T–420 (B24)). No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from an unidentified site in Roaring River Cairn in Barry County, MO. The human remains were acquired by the Grand Rapids Public Museum on September

10, 1974, as a bequest from the Ruth Herrick Estate (Collection T–420 (B24)). No known individual was identified. No associated funerary objects are present.

The age of the human remains cannot be determined. Museum records indicate the human remains were originally bought from a dealer with the understanding that they were from an archeological excavation conducted prior to 1965. Prehistoric objects were also part of the Herrick bequest, but the association between the artifacts and these human remains is not established. A determination of Osage cultural affiliation is based on museum records, consultation, geographic location, and archeological information.

Determinations Made by the Grand Rapids Public Museum

Officials of the Grand Rapids Public Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Osage Nation (previously listed as the Osage Tribe).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Andrea Melvin, Grand Rapids Public Museum, 272 Pearl Street NW, Grand Rapids, MI 49506, telephone (616) 929–1700, email *amelvin@grpm.org,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Osage Nation (previously listed as the Osage Tribe) may proceed.

The Grand Rapids Public Museum is responsible for notifying the Osage Nation (previously listed as the Osage Tribe) that this notice has been published.

Dated: October 13, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

Editorial Note: The Office of the Federal Register received this document on January 25, 2018.

[FR Doc. 2018–01713 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024662; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Andover, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Robert S. Peabody Museum of Archaeology has corrected an inventory of associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on September 22, 2017. This notice corrects the number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request to the Robert S. Peabody Museum of Archaeology. If no additional requestors come forward, transfer of control of the associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to the Robert S. Peabody Museum of Archaeology at the address in this notice by March 1, 2018.

ADDRESSES: Ryan Wheeler, Robert S. Peabody Museum of Archaeology, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of associated funerary objects under the control of the Robert S. Peabody Museum of Archaeology. The associated funerary objects were removed from the Mansion Inn site, Wayland, Middlesex County, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (82 FR 44460–44461, September 22, 2017). During preparation of a receipt for repatriation, it was determined that cataloging errors had been made in compiling the original inventory, largely due to objects with duplicative catalog numbers, objects with no catalog numbers, and discrepancies between catalog cards and objects. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (82 FR 44461, September 22, 2017), column 2, full paragraph 1, sentence 7, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

> The 178 associated funerary objects are 4 adze fragments; 1 axe fragment; 40 bifaces and biface fragments; 22 flakes/debitage; 1 lot flakes/debitage; 1 lot calcined bone fragments; 1 lot charcoal; 1 charred nut fragment; 1 hammerstone; 21 worked and unworked pebbles and pebble fragments; 23 stone tool fragments; and 62 stone fragments.

In the **Federal Register** (82 FR 44461, September 22, 2017), column 2, full paragraph 4, sentence 1, under the heading ''Determinations Made by the Robert S. Peabody Museum of Archaeology,'' is corrected by replacing the number ''188'' with the number ''178.''

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to Ryan Wheeler, Robert S. Peabody Museum of Archaeology, 180 Main Street, Andover MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu,* by March 1, 2018. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to Wampanoag Repatriation Confederation, representing the Mashpee Wampanoag Indian Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah), and, if joined to one or more of the culturally affiliated Tribes, the Assonet Band of the Wampanoag Nation and Nipmuc

Nation, which are non-federally recognized Indian groups, may proceed.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Wampanoag Repatriation Confederation, representing the Mashpee Wampanoag Indian Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah), and, if joined to one or more of the culturally affiliated Tribes, the Assonet Band of the Wampanoag Nation and Nipmuc Nation, which are non-federally recognized Indian groups, that this notice has been published.

Dated: November 15, 2017.

Sarah Glass,

Acting Manager, National NAGPRA Program.

[FR Doc. 2018–01726 Filed 1–29–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000; OMB Control Number 1010–0057; Docket ID: BOEM–2018–0016]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; 30 CFR 550, Subpart C, Pollution Prevention and Control

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before March 1, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to 202–395–5806. Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference Office of Management and Budget (OMB) Control Number 1010–0057 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Anna Atkinson by email, or by telephone at 703–787–1025. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on October 25, 2017 (82 FR 49418). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM? (2) will this information be processed and used in a timely manner? (3) is the estimate of burden accurate? (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected? and (5) how might BOEM minimize the burden of this collection on the respondents, including through the use of information technology?

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.,* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to manage the mineral resources of the OCS. Such rules and regulations apply to all operations conducted under a lease, right-of-use and easement, and pipeline right-of-way.

Section 1334(a)(8) requires that regulations prescribed by the Secretary include provisions ''for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this subchapter significantly affect the air quality of any State.'' This information collection renewal concerns information that is submitted in response to regulatory requirements, such as the regulations at 30 CFR part 550, subpart C, Pollution Prevention and Control that implement section 1334(a)(8). It also covers the related Notices to Lessees and Operators (NTLs) that BOEM issues to clarify and provide additional guidance on some aspects of these regulations. BOEM uses the information to inform its decisions on plan approval, to ensure operations are conducted according to all applicable regulations and plan conditions of approval, and to inform State and regional planning organizations modeling efforts.

Title of Collection: 30 CFR 550, subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulphur lessees and states.

Total Estimated Number of Annual Responses: 2,394 responses.

Total Estimated Number of Annual Burden Hours: 105,028 hours.

Respondent's Obligation: Mandatory, and voluntary.

Frequency of Collection: On occasion, monthly, or annually.

Total Estimated Annual Nonhour Burden Cost: None.

Estimated Reporting and Recordkeeping Hour Burden: We expect the burden estimate for the renewal will be 105,028 hours, which reflects a decrease of 7,083 hours. In calculating the burdens, the burden hours decreased from the previous OMB request, because the number of facilities decreased as reported by the Gulfwide Offshore Activity Data System. We also removed from the burden breakdown table the requirement of submitting copy of State-required Emergency Action Plan for the Pacific OCS Region. This information is not collected by BOEM, because it falls under the jurisdiction of the Bureau of Safety and Environmental Enforcement.

The following table details the individual BOEM components and respective hour burden estimates of this ICR. We assumed that the respondents perform certain activities in the normal course of their business that also satisfy certain requirements under subpart C.

We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 550 subpart C and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Facilities described in new or revised EP or DPP				
303	Submit, modify, or revise Exploration Plans and Development and Production Plans; submit information required under 30 CFR Part 550, Subpart B.	Burden covered under 1010–0151 (30 CFR Part 550, Subpart B).		0
303(k); 304(a), (g); and related NTL.	Collect and report (in manner specified) air emissions related data (such as facility, equipment, fuel usage, and other activity information) during each specified calendar year for input into State and regional planning organizations modeling.	44 hours per facility	2,381 facilities	104,764
303(l); 304(h)	Collect and submit (in manner specified) meteorological data (not routinely collected—minimal burden); emission data for existing facilities to a State.	8	1	8
Subtotal			2,382	104,772
Existing Facilities				
304(a), (f)	Affected State may submit request with required information to BOEM for basic emission data from existing facilities to update State's emission inventory.	16	5	80
304(e)(2)	Submit compliance schedule for application of best available control technology (BACT).	40	1	40
304(e)(2)	Apply for suspension of operations	Burden covered under BSEE 1014–0022 (30 CFR 250.174)		0
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State. Submit additional information, as required.	16	1	16
Subtotal			7	136
General				
303–304	General departure and alternative compliance requests not specifically covered elsewhere in subpart C regulations.	24	5	120
Subtotal			5	120
Total Burden			2,394	105,028

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

We protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and the Department of the Interior's implementing regulations (43 CFR part 2), and under regulations at 30 CFR 550.197, ''Data and information to be made available to the public or for limited inspection.''

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: January 24, 2018.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulation and Analysis.

[FR Doc. 2018–01668 Filed 1–29–18; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 337–TA–1096]

Certain Microperforated Packaging Containing Fresh Produce; Notice of Correction Concerning Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Correction of notice.

SUMMARY: Correction is made to notice 83 FR 3020, which was published on January 22, 2018, to clarify that the patent claims identified in paragraph 1 of the notice (claims 1–6, 11, and 13), refer to claims 1–6, 11, and 13 of U.S. Patent No. 7,083,837.

Issued: January 24, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–01684 Filed 1–29–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–895 (Third Review)]

Pure Granular Magnesium From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on pure granular magnesium from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: December 5, 2017.

FOR FURTHER INFORMATION CONTACT: Ayanna Butler (202–205–2200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 5, 2017, the Commission determined that the domestic interested party group response to its notice of institution (82 FR 41651, September 1, 2017) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on January 11, 2018, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before January 18, 2018 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by January 18, 2018. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's website at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 24, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–01694 Filed 1–29–18; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses submitted by US Magnesium and Local 8319, filed a joint response to the notice of institution, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–576–577 (Final)]

Cold-Drawn Mechanical Tubing from China and India

Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of cold-drawn mechanical tubing from China and India, provided for in subheadings 7304.31.30, 7304.31.60, 7304.51.10, 7304.51.50, 7306.30.50, and 7306.50.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (''Commerce'') to be subsidized by the governments of China and India.[2]

Background

The Commission, pursuant to section 705(b) of the Act (19 U.S.C. 1671d(b)), instituted these investigations effective

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the countervailing duty order on cold-drawn mechanical tubing from China.

April 19, 2017, following receipt of a petition filed with the Commission and Commerce by ArcelorMittal Tubular Products, Shelby, Ohio; Michigan Seamless Tube, LLC, South Lyon, Michigan; PTC Alliance Corp., Wexford, Pennsylvania; Webco Industries, Inc., Sand Springs, Oklahoma; and Zekelman Industries, Inc., Farrell, Pennsylvania. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of cold-drawn mechanical tubing from China and India were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 5, 2017 (82 FR 46522). The hearing was held in Washington, DC, on December 6, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 705(b) of the Act (19 U.S.C. 1671d(b)). It completed and filed its determinations in these investigations on January 24, 2018. The views of the Commission are contained in USITC Publication 4755 (January 2018), entitled *Cold-Drawn Mechanical Tubing from China and India: Investigation Nos. 701–TA–576–577 (Final).*

By order of the Commission.

Issued: January 24, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–01685 Filed 1–29–18; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Advisory Committee on Rules of Civil Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a meeting on April 10, 2018. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: April 10, 2018.

Time: 9:00 a.m. to 5:00 p.m.

ADDRESSES: Johannesburg South Conference Room, Kimpton Hotel Monaco, 433 Chestnut Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 25, 2018.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2018–01750 Filed 1–29–18; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Advisory Committee on Rules of Appellate Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a meeting on April 6, 2018. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: April 6, 2018.

TIME: 9:00 a.m. to 5:00 p.m.

ADDRESSES: Library, U.S. Court of Appeals for the Third Circuit, James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 25, 2018.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2018–01751 Filed 1–29–18; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Parker-Hannifin Corporation and CLARCOR Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Delaware in *United States* v. *Parker-Hannifin Corporation and CLARCOR Inc.,* Civil Action No. 1:17–cv–01354. On September 26, 2017, the United States filed a Complaint alleging that Parker-Hannifin Corporation's (''Parker-Hannifin'') acquisition of CLARCOR Inc.'s (''CLARCOR'') aviation fuel filtration business assets violated Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment requires Parker-Hannifin to divest the Facet filtration business, which includes the aviation fuel filtration assets that it acquired from CLARCOR Inc. on February 28, 2017.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Delaware. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Delaware

United States of America, Plaintiff, v. *Parker-Hannifin Corporation, and CLARCOR Inc., Defendants.*

Civil Action No.: 1:17–CV–01354

Judge James E. Boasberg

COMPLAINT

On February 28, 2017, Parker-Hannifin Corporation acquired its only U.S. competitor in aviation fuel filtration systems and filter elements, CLARCOR Inc. By doing so, it eliminated all head-to-head competition between the only two domestic manufacturers of these products, effectively creating a monopoly in the United States. If permitted to stand, this unlawful merger will harm competition in the development, manufacture and sale of these critical aviation fuel filtration systems. The results would be higher prices, reduced innovation, less reliable delivery times, and less favorable terms of service for the American businesses and military that depend on these critical products.

Accordingly, the United States of America brings this civil antitrust action to unwind this unlawfully created monopoly by means of an order requiring defendant Parker-Hannifin to divest either Parker-Hannifin's or CLARCOR's aviation fuel filtration assets. The United States alleges as follows:

I. INTRODUCTION

1. More than 87,000 flights travel through U.S. airspace on any given day. The safety of the passengers and cargo on each of those flights depends on access to uncontaminated fuel. Before aviation fuel is considered clean enough for use by commercial or military aircraft, contaminants and water must be removed using specialized fuel filtration systems. The failure to clean aviation fuel in this manner can cause plane engines to stall, with potentially catastrophic consequences.

2. In light of the importance of these fuel filtration products, the U.S. airline industry and the U.S. military have adopted standards to govern their use. Under these standards, U.S. airlines require their contracted refueling agents to use qualified aviation fuel filtration products to filter aviation fuel in the United States. To qualify, each manufacturer of aviation fuel filtration products must demonstrate that its products meet the Energy Institute's (''EI'') specifications by passing a rigorous series of tests typically conducted in the presence of an aviation fuel expert from the EI.[1]

3. Prior to this merger, Parker-Hannifin and CLARCOR were the only suppliers of EI-qualified aviation fuel filtration systems and filter elements to U.S. customers. The only other manufacturer of such EI-qualified aviation fuel filtration products in the world is located in Germany. Because that manufacturer does not have a U.S. manufacturing facility and it lacks a U.S. network for sales, warehousing, distribution, technical support and delivery, U.S. customers do not consider it a viable competitive alternative to the merged firms.

4. It is also unlikely that a new entrant to the market could remedy the competition lost as a result of this merger. As the former General Manager of Parker-Hannifin's aviation fuel filters business explained in a sworn statement only a few years ago, securing EI-qualification for aviation fuel filtration products is ''expensive, time-consuming and difficult.''

5. Parker-Hannifin was aware that it was acquiring its only U.S. competitor for these important aviation fuel filtration products. Just weeks before its $4.3 billion merger was announced, the Vice President of Business Development for Parker-Hannifin's Filtration Group wrote to the President of the Filtration Group, identifying ''the notable area of overlap'' between the merging parties in ''ground aviation fuel filtration.'' He asked whether Parker-Hannifin should be ''forthcoming'' about this ''aviation antitrust potential.'' Then, later in that same email, he stated that Parker-Hannifin was ''preparing for the possibility that we may have to divest [CLARCOR's] aviation ground fuel filtration'' business.

6. Because the transaction combines the only two sources of qualified aviation fuel filtration products in the United States, the effect of this merger would be substantially to lessen competition or tend to create a monopoly. Parker-Hannifin's acquisition of CLARCOR's aviation fuel filtration business thus violates the antitrust laws.

II. DEFENDANTS AND THE ILLEGAL TRANSACTION

7. Parker-Hannifin is an Ohio corporation headquartered in Cleveland, Ohio. It is a diversified manufacturer of filtration systems, and motion and control technologies for the mobile, industrial and aerospace markets with operations worldwide. In 2016, the company had sales revenue of $11.4 billion.

8. In 2012, Parker-Hannifin acquired Velcon Filters, LLC (''Velcon''), a manufacturer of EI-qualified aviation fuel filtration equipment. Velcon is a Delaware Limited Liability Company and an indirectly wholly-owned subsidiary of Parker-Hannifin. Parker-Hannifin continues to manufacture and sell aviation fuel filtration equipment under the Velcon brand. Parker-Hannifin has facilities in the United States to develop and manufacture products, and provide service and technical support for its U.S. aviation fuel filtration customers.

9. Prior to its acquisition by Parker-Hannifin, defendant CLARCOR was a Delaware corporation headquartered in Franklin, Tennessee. CLARCOR was a leading provider of filtration systems for diversified industrial markets with net sales of approximately $1.4 billion in 2016. CLARCOR manufactured and sold aviation fuel filtration products through its PECOFacet subsidiary. PECOFacet has facilities in the United States to develop and manufacture products, and provide service and technical support for its U.S. aviation fuel filtration customers.

10. On December 1, 2016, Parker-Hannifin and CLARCOR entered into an Agreement and Plan of Merger whereby Parker-Hannifin, through a newly formed Delaware corporation and wholly-owned subsidiary of Parker-Hannifin (''Merger Sub''), acquired 100% of the voting stock of CLARCOR for $4.3 billion.

11. On February 28, 2017, Parker-Hannifin completed its acquisition. Pursuant to the terms of the Merger Agreement, the Merger Sub merged with and into CLARCOR, with CLARCOR surviving the merger, and existing today as a Delaware-incorporated, wholly-owned subsidiary of Parker-Hannifin.

III. INDUSTRY OVERVIEW

A. *Industry Standards*

12. Aviation fuel originates from the refinery processing of crude oil. Following manufacture, batch production and certification, aviation fuel is released into the distribution system or sent directly by pipeline to an airport. The distribution system may use a number of transportation methods such as pipelines, barges, railcars, ships, and tankers, before it is delivered to airport storage tanks and then pumped into the aircraft.

13. Fuel contaminated by water, particulates or organic material creates unacceptable safety risks to aircraft. Because of the risks of such contaminants being introduced into the fuel at any point in the supply chain, it is critical that fuel be filtered properly at multiple stages in the process before being delivered into the airplane.

14. Due to safety concerns, filtration at airports in particular is subject to specific industry standards. The quality of aviation fuel in the United States is

[1] The EI is an independent, international professional organization for the energy sector that publishes performance and testing standards for aviation fuel filtration products.

regulated by the Federal Aviation Administration, but airlines and their contracted refueling agents are responsible for the handling and filtration of aviation fuel at airports.

15. For more than 25 years, Airlines for America [2] (''A4A''), a trade association for U.S. passenger and cargo carriers, has published standards for aviation fuel quality control at airports, recognizing the ''importance of using quality jet fuel for ensuring the highest degree of flight safety.'' In particular, ATA Specification 103 (''ATA 103'') sets forth specifications, standards, and procedures in the United States for ensuring that planes receive uncontaminated aviation fuel. ATA 103 is the industry standard for aviation fuel handling in the United States and all U.S. commercial airlines have adopted ATA 103 into their operating manuals.

16. A4A and the EI jointly ensure that fuel at airports remains safe and of the highest quality before it is loaded on an aircraft. Accordingly, in its fuel filtration specifications, ATA 103 requires that all aviation fuel be processed by filtration systems that are qualified to meet the latest EI standards.

17. In addition, ATA 103 requires that all aviation fuel be filtered at least three times before it is consumed in an aircraft engine: (1) As it enters an airport storage tank; (2) as it exits the airport storage tank and is pumped into a hydrant system, refueling truck or hydrant cart; and (3) as it is pumped from a hydrant cart or refueling truck into an aircraft.

18. The primary customers of EI-qualified aviation fuel filtration systems and filter elements include commercial airline ground fueling agents, fixed based operators at airports, airport fuel storage operators, and manufacturers of fueling equipment. These customers must follow ATA 103 and are therefore required to purchase and use EI-qualified filtration systems and filter elements. EI-qualified filtration systems and filter elements are also used by customers supplying aviation fuel to U.S. airports.

19. Aviation fuel-related performance standards for U.S. military jets are similar to those followed by commercial airlines. Like commercial airlines, the Department of Defense requires that fuel filtration suppliers meet EI specifications.

[2] Airlines for America was formerly known as the Air Transportation Association of America (''ATA'').

B. *Aviation Fuel Filtration Systems and Elements*

20. An aviation fuel filtration system is comprised of a pressurized vessel that houses consumable filter elements. Customers purchase filtration systems for new fixed installations, such as airport fuel storage facilities, or for mobile fueling equipment, such as refueling trucks or hydrant carts. While vessels can last for decades, the filter elements must be replaced pursuant to a schedule set by ATA 103—or sooner, if contaminants in the fuel affect the filtration system's performance.

Interoperability Standards for Aviation Fuel Filtration Systems

21. Prior to the transaction, Parker-Hannifin and CLARCOR were the only two U.S. manufacturers of EI-qualified filter elements. Their respective filter elements are interoperable with each other's vessels. In fact, the parties marketed their products to U.S. customers with cross-references to each other's compatible part numbers. Thus, prior to the merger, U.S. customers could choose between Parker-Hannifin and CLARCOR filter elements for their vessels and benefited from competition between the two firms resulting in better pricing, terms, and service.

Types of EI-Qualified Aviation Fuel Filtration Systems

22. There are three types of aviation fuel filtration systems that must be qualified to EI standards pursuant to ATA 103: (i) Microfilter systems; (ii) filter water separator systems; and (iii) filter monitor systems (collectively ''EI-qualified aviation fuel filtration systems''). Each type of EI-qualified aviation fuel filtration system uses different filter elements.

23. A microfilter system is a filtration system comprised of a single vessel that houses consumable filter elements. Microfilter systems are sometimes referred to as pre-filters because they are designed to remove dirt and other particulate matter from aviation fuel before it reaches the next level of filtration, which is typically the filter water separator (''FWS'') system.

24. A FWS system is typically comprised of a single vessel and two types of filter elements—coalescers and separators—that remove dirt and water from the aviation fuel to levels acceptable for use in modern aircraft. FWS are required at U.S. airports to filter aviation fuel before entering and after exiting airport storage facilities. They also may be installed on mobile fueling equipment that ultimately connects to the wing of the aircraft to deliver the aviation fuel.

25. A filter monitor (''FM'') system is a filtration system that is comprised of a single vessel that houses one type of consumable filter element, a filter monitor. FM systems are used exclusively on mobile fueling equipment and are often the last point at which aviation fuel is filtered before the fuel is pumped into the plane.

26. U.S. commercial aviation customers use microfilter systems, FWS systems, FM systems, and associated filter elements. Each system and its associated filter elements is qualified to separate EI standards. Filtration products come in dozens of sizes to meet a customer's own specific filtration requirements and design needs, and customers prefer a supplier to have a full line of EI-qualified products. Parker-Hannifin, for example, offers dozens of different FWS vessels—ranging from smaller vessels that weigh 360 pounds and support flow rates of 50 gallons per minute, to larger vessels that weigh 3,800 pounds and support flow rates of 2,500 gallons per minute. CLARCOR has a similarly broad product offering.

27. The U.S. military also uses microfilter systems, FWS systems, and associated filter elements, qualified to EI standards.

C. *Importance of Technical Service and Support*

28. Aviation fuel filtration is a specialized industry in which customers rely on expeditious service and technical support from the manufacturers of aviation fuel filtration products. Disruptions in the supply or performance of aviation fuel filtration systems and filter elements create significant risk, including grounding flights and potentially catastrophic accidents. And because contaminated fuel can imperil the safe operation of the aircraft, both the fuel service provider and the airline itself could incur significant liability if aviation fuel is improperly filtered.

29. As a result, customers rely on manufacturers to provide a rapid response to technical issues. Customers rely on the manufacturer to provide a reliable supply of replacement filtration elements on an emergency basis when needed to resolve unanticipated fuel contamination issues. Customers also rely on manufacturers' trained scientists and custom laboratories to diagnose and repair problems that arise from malfunctioning filters. Recognizing this need, the merging parties provided service and technical support to U.S. customers, including on-site testing, lab testing, analysis services, and training classes.

IV. THE RELEVANT MARKETS THREATENED BY THE ACQUISITION

A. *Relevant Product Markets*

i. EI-Qualified Aviation Fuel Filtration Systems

30. EI-qualified aviation fuel filtration systems is a relevant product market and line of commerce under Section 7 of the Clayton Act. The filtration of aviation fuel at airports in the United States must be performed using aviation fuel filtration systems that are qualified to the latest EI standards. U.S. customers that process aviation fuel typically will accept no substitutes for EI-qualified aviation fuel filtration systems. A company that controls all EI-qualified aviation fuel filtration systems in the United States could profitably raise prices. In the event of a small but significant non-transitory increase in price, customers are unlikely to switch away from EI-qualified aviation fuel filtration systems in sufficient numbers to make that price increase unprofitable.

31. The EI-qualified aviation fuel filtration systems market consists of microfilter systems, FWS systems, and FM systems. Each of these aviation fuel filtration systems comes in a variety of sizes, configurations and technical capabilities to fit the specific needs of the customer, which is unlikely to substitute between them. Each of these systems is offered under essentially the same competitive conditions by the same set of manufacturers, so all EI-certified aviation fuel filtration systems can be grouped together in a single market for purposes of analysis.

ii. EI-Qualified Aviation Fuel Filtration Elements

32. EI-qualified fuel filtration elements is a relevant product market and line of commerce under Section 7 of the Clayton Act. To comply with U.S. industry standards, only EI-qualified aviation fuel filtration elements may be used for the filtration of aviation fuel used at airports in the United States. U.S. customers that process aviation fuel typically will accept no substitutes for EI-qualified aviation fuel filtration elements. A company that controls all EI-qualified aviation fuel filtration elements in the United States could profitably raise prices. In the event of a small but significant non-transitory increase in price, customers are unlikely to switch away from EI-qualified aviation fuel filtration elements in sufficient numbers to make that price increase unprofitable.

33. EI-qualified aviation fuel filtration elements—microfilters, coalescers, separators, and monitors—consist of those replacement elements for EI-qualified aviation fuel filtration systems. Filter elements come in a variety of types and sizes, and customers typically need a specific type and size to fit a particular application, which makes customers unlikely to substitute among different types and sizes of filter elements. Each such element is offered by the same set of manufacturers and is sold under essentially the same competitive conditions, so all EI-certified aviation fuel filtration elements can be grouped together in a single market for analytical purposes.

B. *Relevant Geographic Market*

34. The United States is the relevant geographic market in which to assess the competitive harm that is likely to arise out of this transaction.

35. U.S. customers of aviation fuel filtration systems and filter elements rely on domestic sales and technical support, warehousing and distribution. Ready, available supply of filtration systems and elements is critical to ensuring the proper filtration of aviation fuel. Domestic service, including technical support and training, is also essential for many U.S. customers. Parker-Hannifin and CLARCOR recognize the need for local support and have U.S. facilities that provide sales, technical support and distribution to U.S. customers. These customers are unlikely to rely on a foreign supplier with no U.S. presence even in the event of a significant price increase.

36. In addition, suppliers of aviation fuel filtration products are able to price differently to U.S. customers than to customers located outside of the United States.

V. ANTICOMPETITIVE EFFECTS OF THE ACQUISITION

37. Prior to the acquisition, Parker-Hannifin and CLARCOR were engaged in head-to-head competition in each of the relevant markets. That competition enabled customers of the relevant products to negotiate better pricing, service and terms and to receive innovative product developments from Parker-Hannifin and CLARCOR. The acquisition eliminates this head-to-head competition in each of the relevant markets. This elimination of head-to-head competition will provide Parker-Hannifin with the power to raise prices without fear of losing a significant amount of sales.

38. The merger also reduces non-price competition and innovation. Prior to the acquisition, CLARCOR's PECOFacet brand had distinguished itself as the leading provider of services and non-price benefits, *e.g.,* innovative product improvements, training programs, customer service, and strong on-time delivery, while customers viewed Parker-Hannifin as weaker on customer service and less willing to provide additional non-price benefits. For instance, customers benefited from CLARCOR's free and timely training programs, favorable credit terms, free shipping, and re-stocking programs. Following the merger, Parker-Hannifin's need to compete with these CLARCOR programs and services is eliminated, to the detriment of customers.

39. Timely delivery of filter elements is important to customers. Parker-Hannifin, however, already has plans to shut down the CLARCOR facility used to manufacture the relevant products and consolidate it with Parker-Hannifin's existing facility. Such consolidation will result in reduced inventory and less timely deliveries during unanticipated future emergencies.

40. The only other firm that manufactures EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements is located in Germany. This company lacks a U.S. manufacturing facility and a U.S. network for sales, warehousing, distribution, technical support and delivery. Without that infrastructure, effective near-term expansion by that firm into the United States is unlikely.

41. Even if such expansion were to occur, however, such expansion likely would not be timely or sufficient to restore competition and restrain the anticompetitive effects resulting of the transaction. Customer acceptance is a high barrier to expansion. Parker-Hannifin's Velcon brand and CLARCOR's PECOFacet brand are the only two brands that most U.S. aviation fuel filtration customers have used. Given the critical public safety function that aviation fuel filtration products perform—and the legal liability to the operator should something go wrong—U.S. customers are reluctant to switch to a foreign company with which they are unfamiliar.

VI. ABSENCE OF COUNTERVAILING FACTORS

42. Barriers to entry for the relevant market are significant. They include the high costs and long time frames needed to design, develop, and manufacture the products, as well as the testing needed to obtain EI-qualification. Further, customers are unlikely to accept a new supplier in sufficient numbers to make entry effective if that supplier does not have a network for sales, warehousing, distribution, technical support and delivery. Accordingly, new entry or

expansion in the relevant market is unlikely to occur in a manner that would counteract the harm to competition arising from this merger. Indeed, there has been no effective entry in the United States in the manufacture and sale of EI-qualified aviation fuel filtration systems and elements in decades.

43. Parker-Hannifin recognizes and admits to these entry barriers. In 2013, Parker-Hannifin and Velcon initiated litigation against Velcon's former owners for alleged violations of their non-compete agreements and for misappropriation of trade secrets. In this litigation, Parker-Hannifin submitted a sworn affidavit from Velcon's General Manager who attested that the process for obtaining EI-qualifications for aviation fuel filtration products was ''expensive, time-consuming and difficult.''

44. In addition, Parker-Hannifin averred that the technical information related to its products, including product designs and drawings were protected trade secrets, which ''[o]thers would have to expend significant time and money to acquire and duplicate.''

VII. JURISDICTION AND VENUE

45. The United States brings this civil antitrust action against defendants Parker-Hannifin and CLARCOR under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent and restrain defendants from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. 18.

46. Parker-Hannifin develops, manufactures and sells EI-qualified aviation fuel filtration systems and filter elements in the flow of interstate commerce. Parker-Hannifin's activities in developing, manufacturing and selling these products substantially affect interstate commerce.

47. CLARCOR is a Delaware corporation and a wholly-owned subsidiary of Parker-Hannifin. The aviation fuel filtration assets that are the subject of this lawsuit are held by the surviving corporation, CLARCOR. This Court has subject matter jurisdiction over this action and over each defendant pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a) and 1345.

48. Venue is proper in this District pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b) and (c).

49. This Court has personal jurisdiction over Parker-Hannifin and CLARCOR. CLARCOR is incorporated in the State of Delaware and resides in this District. Further, under the Merger Agreement, Parker-Hannifin ''irrevocably'' submitted itself ''to the personal jurisdiction of each state or federal court sitting in the State of Delaware . . . in any suit, action or proceeding arising out of or relating to this [Merger] Agreement . . .'' and agreed that ''it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court.'' Parker-Hannifin's acquisition of CLARCOR will have effects throughout the United States, including in this District.

VIII. VIOLATIONS ALLEGED

Violation of Section 7 of the Clayton Act

50. The effect of Parker-Hannifin's acquisition of CLARCOR likely will be to substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

51. The transaction has or will have the following effects, among others:

a. Eliminating the head-to-head competition between Parker-Hannifin and CLARCOR in the development, manufacture and sale of EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements; and

b. Raising prices of the relevant products, lengthening delivery times, making terms of service less favorable and reducing innovation.

IX. REQUESTED RELIEF

52. The United States requests that this Court:

a. Adjudge and decree the acquisition of the assets of CLARCOR by defendant Parker-Hannifin to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Order Parker-Hannifin to divest tangible and intangible assets, whether possessed originally by CLARCOR, Parker-Hannifin, or both, sufficient to create a separate, distinct, and viable competing business that can replace CLARCOR's competitive significance in the marketplace, and to take any further actions necessary to restore the markets to the competitive position that existed prior to the acquisition;

c. Award such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the dissipation of CLARCOR's tangible and intangible assets during the pendency of this action and to preserve the possibility of effective permanent relief;

d. Award the United States the cost of this action; and

e. Grant the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

September 26, 2017.

FOR PLAINTIFF UNITED STATES OF AMERICA

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In the United States District Court for the District of Delaware

United States of America, Plaintiff, v. *Parker-Hannifin Corporation, and CLARCOR Inc., Defendants.*

Civil Action No.: 1:17–CV–01354

Judge: James E. Boasberg

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States'') pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. *NATURE AND PURPOSE OF THE PROCEEDING*

On February 28, 2017, defendant Parker-Hannifin Corporation (''Parker-Hannifin'') acquired 100% of the voting stock of CLARCOR Inc. (''Clarcor'') for $4.3 billion (the ''Transaction''). Following customer complaints and an

investigation into the competitive impact of that acquisition, the United States filed a civil antitrust Complaint on September 26, 2017 seeking an order compelling Parker-Hannifin to divest tangible and intangible assets, whether possessed originally by Clarcor, Parker-Hannifin, or both, sufficient to create a separate, distinct, and viable competing business that could replace Clarcor's competitive significance in the marketplace that existed prior to the Transaction. The Complaint alleges that the Transaction resulted in an effective monopoly in the United States between the only two domestic manufacturers of industry-qualified aviation fuel filtration systems and filter elements, thereby significantly lessening competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint further alleges that, if permitted to stand, the merger will harm competition in the development, manufacture, and sale of these critical aviation fuel filtration systems. The results would be higher prices, reduced innovation, less reliable delivery times, and less favorable terms of service.

Concurrent with the filing of this Competitive Impact Statement, the United States and Parker-Hannifin have filed a [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets (''Stipulation and [Proposed] Preservation Order'') and a proposed Final Judgment.[3] The proposed Final Judgment, which is explained more fully below, requires Parker-Hannifin to divest the Facet Filtration Business, which includes the assets of Parker-Hannifin used in the design, development, manufacturing, testing, marketing, sale, distribution or service of aviation fuel filtration products used in aviation ground fuel filtration and sold under the Facet or PECOFacet brand (the ''Divestiture Assets'').[4] The Divestiture Assets encompass the systems and elements that include and comprise all microfilters, filter water separators, and filter monitor components used in aviation ground fuel filtration and sold to customers under the Facet or PECOFacet brands. These aviation fuel filtration products were sold by Clarcor prior to the Transaction and the divestiture of these assets thereby restores the competition that was lost as a result of the acquisition.

The United States and defendants Parker-Hannifin and Clarcor have stipulated that the defendants are bound by the terms of the proposed Final Judgment and that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. *DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION*

A. *Parker-Hannifin and the Clarcor Acquisition*

Parker-Hannifin is an Ohio corporation headquartered in Cleveland, Ohio. It is a diversified manufacturer of filtration systems, and motion and control technologies for the mobile, industrial, and aerospace markets with operations worldwide. In 2016, the company had sales revenues of $11.4 billion, and $12.0 billion in 2017. Parker-Hannifin manufactures and sells aviation fuel filtration products under the Velcon brand.

Prior to its acquisition by Parker-Hannifin, defendant Clarcor was a Delaware corporation headquartered in Franklin, Tennessee. Clarcor was a leading provider of filtration systems for diversified industrial markets with net sales of approximately $1.4 billion in 2016. Clarcor manufactured and sold aviation fuel filtration products through its PECOFacet subsidiary, which has facilities in the United States to develop and manufacture products, and provide service and technical support for its U.S. aviation fuel filtration customers.

On December 1, 2016, Parker-Hannifin and Clarcor entered into an Agreement and Plan of Merger whereby Parker-Hannifin, through a newly formed Delaware corporation and wholly-owned subsidiary of Parker-Hannifin (''Merger-Sub''), acquired 100% of the voting stock of Clarcor. On February 28, 2017, Parker-Hannifin completed its acquisition. Pursuant to the terms of the Merger Agreement, the Merger Sub merged with and into Clarcor, with Clarcor surviving the merger, and existing today as a Delaware-incorporated, wholly-owned subsidiary of Parker-Hannifin.

B. *The Competitive Effects of the Transaction*

1. Industry Background

Aviation fuel originates from the refinery processing of crude oil. Following manufacture, batch production and certification, aviation fuel is released into the distribution system or sent directly by pipeline to an airport. The distribution system may use a number of transportation methods such as pipelines, barges, railcars, ships, and tankers, before it is delivered to airport storage tanks and then pumped into the aircraft.

Fuel contaminated by water, particulates or organic material creates unacceptable safety risks to aircraft. Because of the risks of such contaminants being introduced into the fuel at any point in the supply chain, it is critical that fuel be filtered properly at multiple stages in the process before being delivered into the airplane. Due to safety concerns, filtration at airports is subject to specific industry standards. The quality of aviation fuel in the United States is regulated by the Federal Aviation Administration, but airlines and their contracted refueling agents are responsible for the handling and filtration of aviation fuel at airports.

For more than 25 years, Airlines for America (formerly known as the Air Transportation Association), a trade association for U.S. passenger and cargo carriers, has published standards for aviation fuel quality control at airports, recognizing the ''importance of using quality jet fuel for ensuring the highest degree of flight safety.'' In particular, ATA Specification 103 (''ATA 103'') sets forth specifications, standards, and procedures in the United States for ensuring that planes receive uncontaminated aviation fuel. ATA 103 is the industry standard for aviation fuel handling in the United States and all U.S. commercial airlines have adopted ATA 103 into their operating manuals. Specifically, ATA 103 requires the use of aviation fuel filtration systems and filter elements that are qualified to meet the latest standards set by the Energy Institute (''EI'')—an independent, international professional organization for the energy sector. In addition, ATA 103 requires that all aviation fuel be filtered at least three times before it is consumed in an aircraft engine: (1) as it enters an airport storage tank; (2) as it exits the airport storage tank and is pumped into a hydrant system,

[3] The Stipulation and [Proposed] Preservation Order seeks to modify the Stipulation and Order to Preserve and Maintain Assets (D.I. 20) entered on October 16, 2017 to ensure the preservation of the divestiture assets and their economic and competitive viability until entry of the proposed Final Judgment.

[4] As set forth in the proposed Final Judgment, the Facet Filtration Business also includes (1) clay filter systems and elements used in aviation ground fuel filtration; (2) sewage water treatment systems, fuel/water separator and filter component systems and elements, and bilge water separators, that, in each instance are used in commercial marine, offshore drilling and military marine filtration, and sold to customers under the PECOFacet brand; and (3) oil/water filtration and separation systems and sewage treatment systems, that, in each instance are used in environmental water filtration, and sold to customers under the PECOFacet brand.

refueling truck or hydrant cart; and (3) as it is pumped from a hydrant cart or refueling truck into an aircraft.

The primary customers of EI-qualified aviation fuel filtration systems and filter elements include commercial airline ground fueling agents, fixed based operators at airports, airport fuel storage operators, and manufacturers of fueling equipment. These customers must follow ATA 103 and are therefore required to purchase and use EI-qualified filtration systems and filter elements. EI-qualified filtration systems and filter elements are also used by customers supplying aviation fuel to U.S. airports. Like commercial airlines, the Department of Defense also requires that aviation fuel filtration suppliers meet EI specifications.

2. Relevant Markets

An aviation fuel filtration system is made up of a pressurized vessel that houses consumable filter elements. While vessels can last for decades, the filter elements must be replaced pursuant to a schedule set by ATA 103—or sooner, if contaminants in the fuel affect the filtration system's performance.

There are three types of aviation fuel filtration systems that must be qualified to EI standards pursuant to ATA 103: (i) Microfilter systems; (ii) filter water separator systems; and (iii) filter monitor systems (collectively ''EI-qualified aviation fuel filtration systems''). Each type of EI-qualified aviation fuel filtration system uses different filter elements—microfilters, coalescers, separators, and monitors—which must also meet EI standards (collectively ''EI-qualified aviation fuel filtration elements''). Each system and its associated filter elements is qualified to separate EI standards.

EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements are separate relevant product markets and lines of commerce under Section 7 of the Clayton Act. The filtration of aviation fuel at airports in the United States must be performed using aviation fuel filtration systems that are qualified to the latest EI standards. Similarly, to comply with U.S. industry standards, only EI-qualified aviation fuel filtration elements may be used for the filtration of aviation fuel used at airports in the United States. U.S. customers that process aviation fuel typically will accept no substitutes for (i) EI-qualified aviation fuel filtration systems, or (ii) EI-qualified aviation fuel filtration elements. A company that controls all EI-qualified aviation fuel filtration systems or all EI-qualified aviation fuel filtration elements in the United States could profitably raise prices. In the event of a small but significant non-transitory increase in price, customers are unlikely to switch away from EI-qualified aviation fuel filtration systems or EI-qualified filtration elements in sufficient numbers to make that price increase unprofitable.

Further, as alleged in the Complaint, the relevant geographic market for the development, manufacture, and sale of EI-qualified aviation fuel filtration systems and filter elements is the United States. U.S. customers of aviation fuel filtration systems and filter elements rely on domestic sales and technical support, warehousing and distribution. Ready, available supply of filtration systems and elements is critical to ensuring the proper filtration of aviation fuel. Domestic service, including technical support and training, is also essential for many U.S. customers. Parker-Hannifin and Clarcor recognize the need for local support and have U.S. facilities that provide sales, technical support and distribution to U.S. customers. These customers are unlikely to switch to a foreign supplier with no U.S. presence in the event of a significant price increase.

3. Competitive Effects

Prior to the acquisition, Parker-Hannifin and Clarcor were the only two U.S. manufacturers of EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements and were engaged in head-to-head competition in each of the relevant markets. That competition enabled customers of the relevant products to negotiate better pricing, service and terms and to receive innovative product developments from Parker-Hannifin and Clarcor. The Transaction eliminates this head-to-head competition in each of the relevant markets. This elimination of head-to-head competition will provide Parker-Hannifin with the power to raise prices without fear of losing a significant amount of sales.

As discussed in the Complaint, the merger also reduces non-price competition. Prior to the acquisition, Clarcor's PECOFacet (or Facet) brand had distinguished itself as the leading provider of services and non-price benefits, *e.g.,* innovative product improvements, training programs, customer service, and strong on-time delivery. Following the merger, Parker-Hannifin's need to compete with these Clarcor programs and services is eliminated, to the detriment of customers.

1. Entry and Expansion

The only other firm that manufactures EI-qualified aviation fuel filtration systems and EI-qualified filter elements is located in Germany. This company lacks a U.S. manufacturing facility and a U.S. network for sales, warehousing, distribution, technical support and delivery. Without that infrastructure, effective near-term expansion by that firm into the United States is unlikely. Even if such expansion were to occur, however, such expansion likely would not be timely or sufficient to restore competition and restrain the anticompetitive effects resulting from the Transaction.

Timely and sufficient *de novo* entry is also unlikely. Barriers to entry for the relevant market are significant. They include the high costs and long time frames needed to design, develop, and manufacture the products, as well as the testing needed to obtain EI-qualification. Indeed, there has been no effective entry in the United States in the development, manufacture, or sale of EI-qualified aviation fuel filtration systems and filter elements in decades.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture required by the proposed Final Judgment will create an independent and economically viable competitor in the markets for EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements sold to U.S. customers.

C. *The Divestiture*

The proposed Final Judgment requires Parker-Hannifin and Clarcor to divest the Facet Filtration Business as a viable, ongoing business. The Facet Filtration Business includes and comprises the microfilters, filter water separators, and filter monitor components that are used in aviation ground fuel filtration and sold to customers under the Facet or PECOFacet brands. As defined in Paragraph II(G) of the proposed Final Judgment, the Facet Filtration Business includes facilities located in (i) Stillwell, Oklahoma, (ii) Tulsa, Oklahoma, (iii) La Coruña, Spain, (iv) Paris, France, (v) Torino, Italy, (vi) Cardiff, United Kingdom, and (vii) Almere, The Netherlands. It also includes the aviation fuel filtration testing lab in Greensboro, North Carolina, and the tangible and intangible assets used in connection with the Facet Filtration Business worldwide.

Due to the large number of assets located outside of the United States, the consummated nature of the transaction,

and the administrative complexities involved in a divestiture of this nature, Paragraph IV(A) of the proposed Final Judgment provides that the defendants must divest the Divestiture Assets to an Acquirer acceptable to the United States within the later of: (1) One hundred thirty-five (135) days after filing of the Stipulation and [Proposed] Preservation Order; (2) five (5) calendar days after notice of entry of the Final Judgment by the Court; or (3) fifteen (15) calendar days after the Required Regulatory Approvals have been received. The Divestiture Assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

The proposed Final Judgment also contains provisions to prevent against accidental customer confusion by transitioning away from the use of the ''PECOFacet'' brand on products that are not part of the assets being divested. Under Paragraph II(G)(4), the definition of the Facet Filtration Business excludes from the Divestiture Assets any trademark, trade name, service mark, or service name containing the names ''Clarcor,'' ''PECO,'' or ''PECOFacet,'' except to the extent the Acquirer is required under existing U.S. military contracts with respect to Aviation Fuel Filtration Products qualified to EI standards to use the name ''PECOFacet.'' However, in no event shall such use extend beyond one (1) year following the entry of the Final Judgment. Such a provision ensures that the Acquirer can comply with registration and invoicing requirements for existing U.S. military contracts requiring the use of the ''PECOFacet'' trade name or brand, while transitioning away from the ''PECOFacet'' brand. Similarly, under Paragraph IV(I), Parker-Hannifin is required within two (2) years following the notice of entry of the Final Judgment, or as soon as is practicable under existing contracts or laws, to use reasonable best efforts to transition retained (*i.e.,* non-divested) products sold under the ''PECOFacet'' brand to a brand that does not include the ''Facet'' name. The longer term for which Parker-Hannifin may continue to use the ''PECOFacet'' brand reflects the reality that the ''PECOFacet'' brand is attached to many more PECOFacet contracts globally (in the oil and gas industry) with private and state-owned companies. Because of the volume of these contracts, Parker-Hannifin is likely to expend more time than the Acquirer to move all of these contracts to a new brand.

D. *Transition Services Agreement*

In order to facilitate the Acquirer's immediate use of the Divestiture Assets, Paragraph IV(J) provides the Acquirer with the option to enter into a transition services agreement with Parker-Hannifin to obtain back office and information technology services and support for the Facet Filtration Business for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months.

E. *Employee Retention Provisions*

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer's efforts to hire the employees involved in the Facet Filtration Business. Paragraph IV(C) of the proposed Final Judgment requires defendants to provide the Acquirer with organization charts and information relating to these employees and make them available for interviews, and provides that defendants will not interfere with any negotiations by the Acquirer to hire them. In addition, Paragraph IV(D) provides that for employees who elect employment with the Acquirer, defendants, subject to limited exceptions, shall waive all non-compete and non-disclosure agreements, vest all unvested pension in accordance with the plan, and provide all benefits to which the employees would generally be provided if transferred to a buyer of an ongoing business. The paragraph further provides, that for a period of 12 months from the filing of the Stipulation and [Proposed] Preservation Order, defendants may not solicit to hire, or hire, any such person who was hired by the Acquirer, unless (1) such individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that defendants may solicit or hire that individual.

F. *Divestiture Trustee*

In the event that the defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust of the term of the trustee's appointment.

G. *Prohibition on Reacquisition*

Section XI of the proposed Final Judgment prohibits Parker-Hannifin or Clarcor from reacquiring any part of the Divestiture Assets that is primarily related to aviation fuel filtration products qualified to EI standards during the term of the Final Judgment.

H. *Stipulation and Preservation Order Provisions*

Defendants have entered into the Stipulation and [Proposed] Preservation Order, which was filed simultaneously with the Court, to ensure that, pending the completion of the divestiture, the Divestiture Assets are maintained as an ongoing, economically viable, and active business. The Stipulation and [Proposed] Preservation Order ensures that the Divestiture Assets are preserved and maintained in a condition that allows the divestiture to be effective.

In addition, the defendants are required to implement and maintain procedures to prevent the sharing by personnel of the Facet Filtration Business of competitively sensitive information with personnel with responsibilities relating to Parker-Hannifin's Velcon Filtration Business. Such procedures must be detailed in a document submitted to the United States within thirty (30) calendar days of the Court's entry of the Stipulation and [Proposed] Preservation Order. The United States and Parker-Hannifin will attempt to resolve objections regarding the procedures as promptly as possible, and in the event that the objections cannot be mutually resolved, either party may request for the Court to rule on the procedures.

As set forth in Section VIII of the proposed Final Judgment, until the divestiture required by the Final Judgment has been accomplished, defendants are required to take all steps necessary to comply with the Stipulation and [Proposed] Preservation

Order filed simultaneously with the Court and are prohibited from taking any action that would jeopardize the divestiture.

I. *Enforcement and Expiration of the Final Judgment*

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Parker-Hannifin has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Parker-Hannifin has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that Parker-Hannifin has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, Paragraph XIII(B) requires Parker-Hannifin to reimburse the United States for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Parker-Hannifin that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

III. *REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

IV. *PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT*

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division. United States Department of Justice, 450 5th Street NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

V. *ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT*

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Parker-Hannifin and Clarcor. The United States could have continued the litigation and sought divestiture of either Parker-Hannifin's or Clarcor's aviation fuel filtration assets. The United States is satisfied, however, that the divestiture of the assets in the manner prescribed in the proposed Final Judgment will restore competition in the markets for EI-qualified aviation fuel filtration systems and filter elements in the United States. The proposed Final Judgement would achieve all of the relief the United States would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VI. *STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT*

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the

Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[5]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[6] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also U.S. Airways,* 38 F. Supp. 3d at 74 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461)); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 74 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 75 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F.

[5] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for the courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004) *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[6] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

Supp. 2d at 11.[7] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 75.

VII. *DETERMINATIVE DOCUMENTS*

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 18, 2017

Respectfully submitted,

/s/Samer Musallam

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Attorneys for Plaintiff United States of America

In the United States District Court for the District of Delaware

United States of America, Plaintiff, v. *Parker–Hannifin Corporation* and *Clarcor Inc,* Defendants.

Civil Action No.: 1:17–CV–01354
Judge: James E. Boasberg

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on September 26, 2017, the United States and defendants, Parker-Hannifin Corporation and CLARCOR Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make a certain divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom defendants divest the Divestiture Assets.

B. ''Aviation Fuel Filtration Products'' means the systems and elements that include and comprise microfilters, filter water separators and filter monitor components that are used in aviation ground fuel filtration and sold to customers under the Facet or PECOFacet brands.

C. ''Parker-Hannifin'' means defendant Parker-Hannifin Corporation, an Ohio corporation with its headquarters in Cleveland, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Clarcor'' means defendant CLARCOR Inc., a Delaware corporation, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Divestiture Assets'' means the Facet Filtration Business.

F. ''Divestiture Products'' means: (1) Aviation Fuel Filtration Products, including clay filter systems and elements used in aviation ground fuel filtration; (2) sewage water treatment systems, fuel/water separator and filter components systems and elements, and bilge water separators, that, in each instance are used in commercial marine, offshore drilling, and military marine filtration applications, and sold to customers under the PECOFacet brand; and (3) oil/water filtration and separation systems and sewage treatment systems, that, in each instance are used in environmental water filtration applications, and sold to customers under the PECOFacet brand.

G. ''Facet Filtration Business'' means all assets of Parker-Hannifin used in the design, development, manufacturing, testing, marketing, sale, distribution or service of Divestiture Products, including:

1. The facilities, to the extent leased or owned, located at:

a. 470555 E 868 Road, Stilwell, OK 74960;

b. 5935 S 129th E Ave, Suite A, Tulsa, OK 74134;

c. Avenida da Ponte, 16, 15142, Arteixo, La Coruña, Spain;

d. 22, Avenue des Nations, ZI Paris Nord II, BP 69055, 95972 Roissy CDG Cedex, France;

e. C. so IV Novembre n. 58, 10070 Cafasse (Torino), Italy;

f. Units 4.3 and 4.4, Treforest Industrial Estate, Pontypridd, Mid Glamorgan, CF37 5FB, United Kingdom; and

g. Damsluisweg 40A 1332 ED, Almere, The Netherlands;

2. The 2,080 sq. ft. aviation fuel filtration testing lab building located at 8439 Triad Drive, Greensboro, NC 27409, including rights to reasonably access the facility;

3. All tangible assets used by the Facet Filtration Business, including all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records, but excluding: (i) PECOFacet Quick Response Centers and all assets therein, (ii) Parker-Hannifin offices located in Australia, Brazil, Canada,

[7] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should. . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

China, Germany, Malaysia, Mexico, and Morocco, and all assets therein, and (iii) Clarcor-owned distributors that sell Divestiture Products;

4. All intangible assets owned, licensed, controlled, or used primarily by the Facet Filtration Business, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (excluding any trademark, trade name or service mark, or service name containing the names ''Clarcor,'' ''PECO,'' or ''PECOFacet,'' except to the extent the Acquirer is required under existing U.S. military contracts for EI-qualified Aviation Fuel Filtration Products to use the name ''PECOFacet,'' but in no event shall such use extend beyond one year following the entry of this Final Judgment), technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, manuals and technical information defendants provide to their own employees, customers, suppliers, agents, or licensees, and research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

H. ''Relevant Employees'' means all personnel primarily involved in the design, development, manufacturing, testing, marketing, sale, distribution or service of Divestiture Products.

I. ''Required Regulatory Approvals'' means clearance pursuant to any Committee on Foreign Investment in the United States (''CFIUS'') filing or similar foreign investment filing, if any, made by the defendants and/or Acquirer and any approvals or clearances required under antitrust or competition laws.

J. ''Transaction'' means Parker-Hannifin Corporation's acquisition of CLARCOR Inc. pursuant to the Agreement and Plan of Merger dated as of December 1, 2016.

III. Applicability

A. This Final Judgment applies to Parker-Hannifin and Clarcor, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendants are ordered and directed, within the later of: (1) One hundred thirty-five (135) calendar days after filing of the [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets, (2) five (5) calendar days after notice of entry of this Final Judgment by the Court, or (3) fifteen (15) calendar days after Required Regulatory Approvals have been received, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed thirty (30) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States with organization charts and information relating to Relevant Employees, including name, job title, past experience relating to the Facet Filtration Business, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable the Acquirer to make offers of employment. Upon request, defendants shall make Relevant Employees available for interviews with the Acquirer during normal business hours at a mutually agreeable location and will not interfere with any negotiations by the Acquirer to employ any Relevant Employee. Interference with respect to this paragraph includes, but is not limited to, offering to increase the salary or benefits of Relevant Employees other than as a part of a company-wide increase in salary or benefits granted in the ordinary course of business.

D. For any Relevant Employees who elect employment with the Acquirer, defendants shall waive all noncompete and nondisclosure agreements, vest all unvested pension rights in accordance with the plan, and provide all benefits to which the Relevant Employees would generally be provided if transferred to a buyer of an ongoing business. For a period of twelve (12) months from the filing of the [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets in this matter, defendants may not solicit to hire, or hire, any such person who was hired by the Acquirer, unless (1) such individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that defendants may solicit or hire that individual. Nothing in Paragraphs IV(C) and (D) shall prohibit defendants from maintaining any reasonable restrictions on the disclosure by any employee who accepts an offer of employment with the Acquirer of the defendant's proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to defendants' businesses and clients, and (3) unrelated to the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Facet Filtration Business; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer that each tangible asset will be operational on the date of sale subject to ordinary course maintenance and wear and tear.

G. Defendants shall not take any action that will knowingly impede in any material way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer that, except as may be expressly disclosed, there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each tangible asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets, except as related to the asset identified in Paragraph II(G)(2) to the extent that the Acquirer's operation of the asset is inconsistent with past practice and materially impacts the operation of Parker-Hannifin's retained operations at the same location.

I. Within two years following the notice of entry of this Final Judgment, or as soon as is practicable under existing contracts or laws, defendants will use reasonable best efforts to transition retained products sold under the ''PECOFacet'' brand to a brand that does not include the ''Facet'' name.

J. At the option of the Acquirer, Parker-Hannifin shall enter a transition services agreement to provide back office and information technology services and support for the Facet Filtration Business for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. If the Acquirer seeks an extension of the term of this transition services agreement, it shall so notify the United States in writing at least three (3) months prior to the date the transition services contract expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least two (2) months prior to the date the transition services contract expires. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance. The Parker-Hannifin employee(s) tasked with providing these transition services may not share any competitively sensitive information of the Acquirer with any other Parker-Hannifin employee.

K. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of the development, design, manufacture, testing, marketing, sale, or distribution of Aviation Fuel Filtration Products qualified to Energy Institute standards and sold to customers in the United States. Divestiture of the Divestiture Assets, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the development, manufacture, and sale of Aviation Fuel Filtration Products qualified to Energy Institute standards that are sold to customers in the United States; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no

action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. Asset Preservation

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets, which is intended to supersede the Stipulation and Order to Preserve and Maintain Assets (D.I. 20) entered by this Court on October 16, 2017. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the proposed Order Stipulating to Modification of Order to Preserve and Maintain Assets in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, defendants shall deliver to the United States an affidavit, signed by each defendant's Chief Financial Officer and General Counsel which shall describe the fact and manner of defendants' compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the proposed Order Stipulating to Modification of Order to Preserve and Maintain Assets in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year

after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. Pursuant to the Joint Stipulated Protective Order entered on November 29, 2017 and all applicable rules and regulations, no information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets that is primarily related to Aviation Fuel Filtration Products during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and they waive any argument that a different standard of proof should apply.

B. In any enforcement proceeding in which the Court finds that the defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. Defendants agree to reimburse the United States for any attorneys' fees, experts' fees, and costs incurred in connection with any effort to enforce this Final Judgment.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

IT IS SO ORDERED.

Date

Judge John E. Jones III

[FR Doc. 2018–01741 Filed 1–29–18; 8:45 am]

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110—NEW]

Agency Information Collection Activities; Proposed eCollection; eComments requested

AGENCY: Hazardous Devices School Course Application (FD–731), Critical Incident Response Group, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Critical Incident Response Group (CIRG), Hazardous Devices School (HDS) 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. This proposed information collection was previously published in the **Federal Register** allowing for a 60 day comment period.

DATES: Comments are encourages and will be accepted for an additional 30 day until March 1, 2018.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time,

should be directed to U.S. Department of Justice, Federal Bureau of Investigation. Contact Mark H. Wall, Hazardous Devices School, 7010 Redstone Road, Huntsville, AL 35898.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of a new collection.

(2) *Title of the Form/Collection:* Federal Bureau of Investigation Hazardous Devices School Course Application.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: FD–731.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: This form is utilized by the FBI, Hazardous Devices School to collection information needed during a review process of the identification and qualification of prospective students, and to initiate a review of security clearance status prior to being granted access to law enforcement sensitive and classified facilities and information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 1000 respondents will complete each form within approximately 45 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 700 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: January 25, 2018.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2018–01752 Filed 1–29–18; 8:45 am]

BILLING CODE 4410–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–250; NRC–2018–0015]

Florida Power & Light Company; Turkey Point Nuclear Generating Unit No. 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. DPR–31, issued to Florida Power & Light Company, for operation of the Turkey Point Nuclear Generating Unit No. 3. The proposed amendment would revise the Turkey Point Technical Specifications (TS) to allow a one-time extension of the allowable outage time for the Unit 3 Containment Spray System from 72 hours to 14 days. The one-time extension of the allowable outage time is necessary to perform a planned modification of the 3A Containment Spray pump while at-power and would be valid during the remainder of the Unit 3 operating cycle, which ends in the fourth quarter of 2018.

DATES: Submit comments by March 1, 2018. Requests for a hearing or petition for leave to intervene must be filed by April 2, 2018.

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

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0015. 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.

• *Mail comments to:* May Ma, Office of Administration, Mail Stop: OWFN–2–A13, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael Wentzel, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6459, email: *michael.wentzel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0015 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0015.

• *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 License Amendment Request 256, One-Time Extension of 3A Containment Spray Pump Completion Time is available in ADAMS under Accession No. ML17353A492.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0015 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://*

www.regulations.gov as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

I. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. DPR–31, issued to Florida Power & Light Company, for operation of the Turkey Point Nuclear Generating Unit No. 3, located in Miami-Dade County, Florida.

The proposed amendment would revise the Turkey Point TS to allow a one-time extension of the allowable outage time for the Unit 3 Containment Spray System from 72 hours to 14 days. The one-time extension of the allowable outage time is necessary to perform a planned modification of the 3A Containment Spray pump while at-power and would be valid during the remainder of the Unit 3 operating cycle, which ends in the fourth quarter of 2018.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment modifies the Turkey Point TS by extending the 3A Containment Spray Pump completion time from 72 hours to 14 days on a one-time basis. The proposed one-time extension extends the unavailability of the 3A Containment Spray Pump but otherwise does not alter the manner in which the Containment Spray System is operated or maintained. Planned maintenance is neither a precursor to an accident nor an accident initiator. The additional time the 3A Containment Spray Pump will be removed from service will not affect the ability of the Containment Spray System to operate as designed since the system has no time-dependent failure modes.

Therefore, facility operation in accordance with the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment modifies the Turkey Point TS by extending the 3A Containment Spray Pump completion time from 72 hours to 14 days on a one-time basis. The proposed change does not introduce new equipment, create new failure modes for existing equipment, or create new limiting single failures. The proposed amendment does not involve a physical alteration of any SSC [structure, system, or component], or a change in the way any SSC is operated or maintained. The proposed change does not involve operation of any SSCs in a manner or configuration different from that previously recognized or evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed license amendment modifies the Turkey Point TS by extending the 3A Containment Spray Pump completion time from 72 hours to 14 days on a one-time basis. Extending the Completion Time does not involve change[s to] any limit on accident consequences specified in the Turkey Point license or applicable regulations, does not modify how accidents are mitigated and does not involve a change in a methodology. No limiting safety limits or limiting safety settings are affected by the proposed change.

Therefore, operation of the facility in accordance with the proposed change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and

telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time

the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated December 18, 2017.

Attorney for licensee: William S. Blair, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Blvd., MS LAW/JB, Juno Beach, FL 33408–0420.

NRC Branch Chief: Undine Shoop.

Dated at Rockville, Maryland, this 23rd day of January 2018.

For the Nuclear Regulatory Commission.

Michael J. Wentzel,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulations.

[FR Doc. 2018–01636 Filed 1–29–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530; NRC–2018–0016]

Arizona Public Service Company Palo Verde Nuclear Generating Station, Units 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a July 1, 2016, request, as supplemented by letter dated June 2, 2017, from Arizona Public Service Company (the licensee) in order to use Optimized ZIRLO™ fuel rod cladding material at Palo Verde Nuclear Generating Station, Units 1, 2, and 3.

DATES: The exemption was issued on January 23, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0016 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0016. 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 in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *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: Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1564, email: *Siva.Lingam@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC's letter, exemption, and associated safety evaluation dated January 23, 2018 are available in ADAMS under Accession No. ML17319A214.

Dated at Rockville, Maryland, this 25th day of January, 2018.

For the Nuclear Regulatory Commission.

Margaret W. O'Banion,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[NRC–2018–0012]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from December 30, 2017, to January 12, 2018. The last biweekly notice was published on January 16, 2018.

DATES: Comments must be filed by March 1, 2018. A request for a hearing must be filed by April 2, 2018.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0012. 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.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: OWFN–2–A13, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynn Ronewicz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1927, email: *Lynn.Ronewicz@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0012, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0012.
- *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.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0012, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

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

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

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in

the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC's Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may not submit paper copies of their filings

unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Entergy Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: September 8, 2017. A publicly-available version is in ADAMS under Accession No. ML17255A463.

Description of amendment request: The amendment would revise the RBS Technical Specifications (TSs) by adding a new specification related to ''Control Building Air Conditioning (AC) System,'' TS Limiting Condition for Operation 3.7.7. This new TS specifically would address the AC function for switchgear and other electrical equipment located in the RBS control building. A TS Surveillance Requirement 3.7.7.1 would be added to verify that the control building AC (CBAC) system has the capability to remove the assumed heat load. The proposed amendment also requests a correction to the RBS license antitrust conditions, Appendix C, due to an administrative error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed addition of Technical Specification (TS) 3.7.7 creates a Limiting Condition for Operation (LCO) for the CBAC system required to support TS equipment. The Completion Time presented in the proposed TS is consistent with other [engineered safety feature (ESF)] mechanical system Completion Times and is supported by the inputs used in the current analysis.

The CBAC systems, including the Control Building Heating, Ventilation, and Air Conditioning (HVAC) and the Control Building Chilled Water systems, are designed for the mitigation of design basis accidents or transients, such as a Loss of Coolant Accident (LOCA). They are not designed, nor do they serve, for the prevention of those events. Consequently, the proposed amendment does not increase the probability of a previously evaluated accident occurring.

Should an accident occur during the period of time that one subsystem of the CBAC system is out of service, the other subsystem components would serve to provide the minimum required air conditioning and chilled water assumed in the accident analysis. Therefore, the radiological consequences of associated accidents assuming no additional failures are not impacted by the proposed amendment.

Therefore, it is concluded that this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change provides a new technical specification providing a new completion time [(CT)] for one CBAC subsystem out of service CT. The change does not involve any unanalyzed modifications to the design or operational limits. The new CT does not introduce any new or unanalyzed modes of operation. No new accident scenarios, failure mechanisms or limiting single failures are introduced as result of the proposed change. The change has no adverse effects on any safety related system. Therefore, no new failure modes or accident precursors are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not change any accident analyses. The proposed change does not exceed or alter a design basis or safety limit, including limits on Control Building temperatures; therefore it does not significantly reduce the margin of safety. The proposed change establishes TS Allowed Outage Times for CBAC which are longer than the current governing LCO's. The risk implications of this amendment request were evaluated and found to be acceptable.

During the proposed Completion Time, the supported systems will remain capable of providing adequate airflow and chilled water to maintain the supported systems capable of mitigating the consequences of a design basis event such as LOCA with no additional single failure.

The proposed change does not impact accident offsite dose, containment pressure or temperature, emergency core cooling system (ECCS) or reactor protection system (RPS) settings or other parameter that could affect a margin of safety.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William B. Glew, Jr., Associate General Counsel—Entergy Services, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: November 15, 2017. A publicly-available version is in ADAMS under Accession No. ML17319A898.

Description of amendment request: The amendment would revise the RBS Technical Specifications (TSs) by replacing the existing specifications related to ''operation with a potential for draining the reactor vessels'' (OPDRVs) with revised requirements for reactor pressure vessel (RPV) water inventory control (WIC) to protect Safety Limit 2.1.1.3. Safety Limit 2.1.1.3 requires reactor vessel water level to be greater than the top of active irradiated fuel. The proposed amendment would adopt changes, with variations as noted in the license amendment request, and is based on the NRC-approved safety evaluation for Technical Specifications Task Force (TSTF) Traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control,'' dated December 20, 2016 (ADAMS Accession No. ML16343B065).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. Draining of RPV water inventory in Mode 4 (*i.e.,* cold shutdown) and Mode 5 (*i.e.,* refueling) is not an accident previously evaluated and, therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in Mode 4 or Mode 5 is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed change reduces the probability of an unexpected draining event (which is not a previously evaluated accident) by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to the top of the active fuel (TAF). These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event.

The proposed change reduces the consequences of an unexpected draining event (which is not a previously evaluated accident) by requiring an Emergency Core Cooling System (ECCS) subsystem to be operable at all times in Modes 4 and 5. The current TS requirements do not require any water injection systems, ECCS or otherwise, to be Operable in certain conditions in Mode 5. The change in requirement from two ECCS subsystems to one ECCS subsystem in Modes 4 and 5 does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is as capable of mitigating the event as the current requirements.

The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that containment and/or filtration would be available if needed.

The proposed change reduces or eliminates some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of an ECCS subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in Modes 4 and 5 is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. The proposed change will not alter the design function of the equipment involved. Under the proposed change, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into

service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements.

The event of concern under the current requirements and the proposed change is an unexpected draining event. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis and no margin of safety is established in the licensing basis. The safety basis for the new requirements is to protect Safety Limit 2.1.1.3. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the top of the fuel in the reactor vessel should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to the TAF within one hour are now prohibited. New escalating compensatory measures based on the limiting drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to ensure that the Safety Limit is protected and to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William B. Glew, Jr., Associate General Counsel—Entergy Services, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Robert J. Pascarelli.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: December 6, 2017. A publicly-available version is in ADAMS under Accession No. ML17347A788.

Description of amendment request: The amendment would add, replace, and modify numerous technical specification (TS) requirements related to operations that have the potential for draining the reactor vessel (OPDRVs) with new requirements on reactor pressure vessel water inventory control (RPV WIC) to protect TS Safety Limit 2.1.1.3. The proposed changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF–542, ''Reactor Pressure Vessel Water Inventory Control.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. Draining of RPV water inventory in Mode 4, (*i.e.,* cold shutdown) and Mode 5 (*i.e.,* refueling) is not an accident previously evaluated and, therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in Mode 4 or Mode 5 is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed change reduces the probability of an unexpected draining event (which is not a previously evaluated accident) by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to the top of active fuel (TAF). These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event.

The proposed change reduces the consequences of an unexpected draining event (which is not a previously evaluated accident) by requiring an Emergency Core Cooling System (ECCS) subsystem to be operable at all times in Modes 4 and 5. The current TS requirements do not require any water injection systems, ECCS or otherwise, to be Operable in certain conditions in Mode 5. The change in requirement from two ECCS subsystems to one ECCS subsystem in Modes 4 and 5 does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is capable of mitigating the event as the current requirements. The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that containment and/or filtration would be available if needed.

The proposed change reduces or eliminates some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of an ECCS subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in Modes 4 and 5 is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. The proposed change will not alter the design function of the equipment involved. Under the proposed change, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements.

The event of concern under the current requirements and the proposed change is an unexpected draining event. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and license bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis and no margin of safety is established in the license basis. The safety basis for the new requirements is to protect Safety Limit 2.1.1.3. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the top of the fuel in the reactor vessel should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to the TAF within one hour are now prohibited. New escalating compensatory measures based on the limiting

drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to ensure that the Safety Limit is protected and to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: David J. Wrona.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 21, 2017. A publicly-available version is in ADAMS under Accession No. ML17265A847.

Description of amendment request: The amendment would revise the Hope Creek Generating Station Technical Specifications (TSs) by replacing the existing specifications related to ''operation with a potential for draining the reactor vessel'' (OPDRV) with revised requirements for reactor pressure vessel (RPV) water inventory control (WIC) to protect Safety Limit 2.1.4. Safety Limit 2.1.4 requires reactor vessel water level to be greater than the top of active irradiated fuel. The amendment would adopt changes with variations as noted in the license amendment request and is based on the NRC-approved safety evaluation for Technical Specifications Task Force (TSTF) Traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control,'' dated December 20, 2016.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.4. Draining of RPV water inventory in OPCON [Operational Condition] 4 (*i.e.,* cold shutdown) and OPCON 5 (*i.e.,* refueling) is not an accident previously evaluated and, therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in OPCON 4 or OPCON 5 is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed change reduces the probability of an unexpected draining event (which is not a previously evaluated accident) by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to the top of the active fuel (TAF). These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event.

The proposed change reduces the consequences of an unexpected draining event (which is not a previously evaluated accident) by requiring an Emergency Core Cooling System (ECCS) subsystem to be operable at all times in OPCONs 4 and 5. The current TS requirements do not require any water injection systems, ECCS or otherwise, to be Operable in certain conditions in OPCON 5. The change in requirement from two ECCS subsystems to one ECCS subsystem in OPCONs 4 and 5 does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is as capable of mitigating the event as the current requirements. The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that containment and/or filtration would be available if needed.

The proposed change reduces or eliminates some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of an ECCS subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in Modes 4 and 5 is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.4. The proposed change will not alter the design function of the equipment involved. Under the proposed change, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements.

The event of concern under the current requirements and the proposed change is an unexpected draining event. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis and no margin of safety is established in the licensing basis. The safety basis for the new requirements is to protect Safety Limit 2.1.4. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the top of the fuel in the reactor vessel should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to the TAF within one hour are now prohibited. New escalating compensatory measures based on the limiting drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to ensure that the Safety Limit is protected and to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: James G. Danna.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 15, 2016, as supplemented by letters dated June 8, 2017, and July 17, 2017.

Brief description of amendments: The amendments modified Technical Specification (TS) 3.9.4, ''Residual Heat Removal (RHR) and Coolant Circulation—High Water Level,'' and TS 3.9.5, ''Residual Heat Removal (RHR) and Coolant Circulation—Low Water Level.'' Condition A of TS 3.9.4 applies when RHR requirements are not met and includes four required actions. Required Action A.4 requires, within 4 hours, the closure of all containment penetrations providing direct access from containment atmosphere to outside atmosphere. The proposed changes revise Required Action A.4 and add new Required Actions A.5, A.6.1, and A.6.2 to clarify that the intent of the required actions is to establish containment closure. Each of these required actions will have a completion time of 4 hours. Condition B of TS 3.9.5 applies when no RHR loop is in operation and includes three required actions. Required Action B.3 requires the closure of all containment penetrations providing direct access from containment atmosphere to outside atmosphere. The proposed changes are the same as the proposed changes to TS 3.9.4, consisting of a revision to Required Action B.3 and the addition of new Required Actions B.4, B.5.1, and B.5.2. These proposed changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–197–A, Revision 2, ''Require Containment Closure When Shutdown Cooling Requirements Are Not Met.''

Date of issuance: January 4, 2018.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 297 (Unit 1) and 293 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17296A208; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Renewed Licenses and TSs.

*Date of initial notice in **Federal Register:*** May 23, 2017 (82 FR 23618).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 4, 2018.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 11, 2017, as supplemented by letter dated June 8, 2017.

Brief description of amendments: The amendments modified Technical Specification (TS) 3.9.4, ''Residual Heat Removal (RHR) and Coolant Circulation—High Water Level,'' and TS 3.9.5, ''Residual Heat Removal (RHR) and Coolant Circulation—Low Water Level.'' Condition A of TS 3.9.4 applies when RHR requirements are not met and includes four required actions. Required Action A.4 requires, within 4 hours, the closure of all containment penetrations providing direct access from containment atmosphere to outside atmosphere. The proposed changes revise Required Action A.4 and add new Required Actions A.5, A.6.1, and A.6.2 to clarify that the intent of the required actions is to establish containment closure. Each of these required actions will have a completion time of 4 hours. Condition B of TS 3.9.5 applies when no RHR loop is in operation and includes three required actions. Required Action B.3 requires the closure of all containment penetrations providing direct access from containment atmosphere to outside atmosphere. The proposed changes are the same as the proposed changes to TS 3.9.4, consisting of a revision to Required Action B.3 and the addition of new Required Actions B.4, B.5.1, and B.5.2. These proposed changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–197–A, Revision 2, ''Require Containment Closure When Shutdown Cooling Requirements Are Not Met.''

Date of issuance: January 5, 2018.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 305 (Unit 1) and 284 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17297A917; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Renewed Licenses and TSs.

*Date of initial notice in **Federal Register:*** May 23, 2017 (82 FR 23619).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 2018.

No significant hazards consideration comments received: Yes. One comment from a member of the public was received; however, it was not related to the proposed no significant hazards consideration determination or to the proposed license amendment request.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: April 7, 2017, as supplemented by letter dated August 17, 2017.

Brief description of amendment: The amendment revised Technical Specification Section 3.5.4, ''Refueling Water Storage Tank (RWST),'' to allow for the temporary connection between

the non-seismically qualified piping of the boric acid recovery system to the seismically qualified piping of the RWST for the purpose of purifying the contents of the RWST in advance of the Indian Point Nuclear Generating Unit No. 2 spring 2018 refueling outage. Operation in this mode will be under administrative controls and will only be applicable through the end of the spring 2018 refueling outage.

Date of issuance: January 11, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 288. A publicly-available version is in ADAMS under Accession No. ML17348A695; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–26: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** July 18, 2017 (82 FR 32881). The supplemental letter dated August 17, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2018.

No significant hazards consideration comments received: No.

Entergy Operations, Inc.; System Energy Resources, Inc.; Cooperative Energy, A Mississippi Electric Cooperative; and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1 (GGNS), Claiborne County, Mississippi

Date of amendment request: December 29, 2016, as supplemented by letter dated August 25, 2017.

Brief description of amendment: The amendment modified GGNS Technical Specification (TS) 5.5.12, ''10 CFR Appendix J, Testing Program,'' and TS Surveillance Requirement 3.6.5.1.1 to allow for a one cycle extension to the 10-year frequency of the GGNS containment leakage rate test (*i.e.,* Integrated Leakage Rate Test or Type A test) and the drywell bypass leakage rate test, respectively.

Date of issuance: December 29, 2017.

Effective date: As of the date of issuance and shall be implemented by February 18, 2018.

Amendment No: 214. A publicly-available version is in ADAMS under Accession No. ML17334A739; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–29: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** May 23, 2017 (82 FR 23625). The supplemental letter dated August 25, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 2017.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Unit Nos. 2 and 3, Grundy County, Illinois

Date of amendment request: February 10, 2017, as supplemented by letters dated July 13, December 20, and December 21, 2017.

Brief description of amendments: The amendments revised the DNPS, Unit Nos. 2 and 3, Technical Specifications (TSs) by replacing the existing specifications related to ''operations with a potential for draining the reactor vessel'' with revised requirements for reactor pressure vessel water inventory control to protect Safety Limit 2.1.1.3. Safety Limit 2.1.1.3 requires reactor vessel water level to be greater than the top of active irradiated fuel. The amendments adopt changes, with variations, as noted in the license amendment request, and are based on the NRC-approved safety evaluation for Technical Specifications Task Force (TSTF) Traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control,'' dated December 20, 2016.

Date of issuance: January 8, 2018.

Effective date: As of the date of issuance and shall be implemented prior to the beginning of the DNPS, Unit No. 3, refueling outage currently planned for fall of 2018.

Amendment Nos.: 256 (Unit No. 2) and 249 (Unit No. 3). A publicly-available version is in ADAMS under Accession No. ML17272A783; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–19 and DPR–25: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** April 11, 2017 (82 FR 17457). The supplemental letters dated July 13, December 20, and December 21, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety evaluation dated January 8, 2018.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, on January 23, 2018.

For the Nuclear Regulatory Commission.

Greg A. Casto,

Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–01469 Filed 1–29–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Temporary Emergency Committee of the Board of Governors; Sunshine Act Meeting

DATE AND TIME: Thursday, February 8, 2018, at 9:00 a.m.; and Friday, February 9, at 8:30 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, in the Benjamin Franklin Room.

STATUS: Thursday, February 8, 2018, at 9:00 a.m.—Closed; Friday, February 9, at 8:30 a.m.—Open.

MATTERS TO BE CONSIDERED:

Thursday, February 8, 2018, at 9:00 a.m. (Closed)

1. Financial Matters.
2. Strategic Issues.
3. Executive Session—Discussion of prior agenda items and Board governance.

Friday, February 9, at 8:30 a.m. (Open)

1. Remarks of the Postmaster General and CEO and Chairman of the Temporary Emergency Committee of the Board.
2. Approval of Minutes of Previous Meetings.
3. Postal Quarter 1 Financial Report.
4. Postal Quarter 1 Service Performance Report.
5. Draft Agenda for the April 10, 2018 meetings.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2018–01936 Filed 1–26–18; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82582; File No. SR–DTC–2017–804]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Extension of the Review Period of an Advance Notice To Amend the Loss Allocation Rules and Make Other Changes

January 24, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–DTC–2017–804 (''Advance Notice'') as described in Items I and II below, which Items have been prepared by the clearing agency.[2] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons and to extend the review period of the Advance Notice for an additional 60 days pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[3]

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed by DTC in connection with proposed modifications to the Rules, By-Laws and Organization Certificate of DTC (''Rules'').[4] 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 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 Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. 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 and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments relating to this proposal have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Nature of the Proposed 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

[1] 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively.

[2] On December 18, 2017, DTC filed the Advance Notice as a proposed rule change (SR–DTC–2017–022) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[3] 12 U.S.C. 5465(e)(1)(H).

[4] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[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.*

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 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

[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.

[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.

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.

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

[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.

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 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

[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.

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 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

[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.

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 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

[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.

[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.

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 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

[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).

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 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

[44] *See supra* note 24.

[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.

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 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.

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

[51] *See supra* note 18.

[52] *See supra* note 33.

[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.

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 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

[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).

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 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.

Expected Effect on Risks to the Clearing Agency, Its Participants and the Market

DTC believes 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 by clarifying and providing the related processes, would provide clarity as to the application of the Participants Fund to fund settlement and would mitigate any risk to settlement finality due to Participant Default.

DTC believes that the proposed rule change to enhance the resiliency of DTC's loss allocation process and to shorten the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant would reduce the risk of uncertainty to DTC, its Participants and the market overall.

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.

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 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.

Management of Identified Risks

DTC is proposing the rule changes as described in detail above in order to (i)

provide clarity as to the application of the Participants Fund to fund settlement when a Participant fails to settle, (ii) enhance the resiliency of DTC's loss allocation process, and (iii) provide clarity and certainty to Participants regarding DTC's loss allocation process.

Consistency With the Clearing Supervision Act

The proposed rule change would be consistent with Section 805(b) of the Clearing Supervision Act.[57] The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[58]

The proposed rule change would provide clarity and certainty around the use of the Participants Fund in connection with a Participant Default by expressly providing for the application of the Actual Participants Fund Deposit of the defaulting Participant to its unpaid obligations, and by providing a defined process for pro rata settlement charges to non-defaulting Participants that is separate from the loss allocation process. Together, these proposed rule changes more clearly specify the rights and obligations of DTC and its Participants in respect of the application of the Participants Fund. Reducing the risk of uncertainty to DTC, its Participants, and the market overall would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Therefore, DTC believes that the proposed rule changes to provide clarity and certainty around the use of the Participants Fund in connection with a Participant Default, and to provide a defined process for pro rata settlement charges to the Actual Participants Fund Deposits of non-defaulting Participants, are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

The proposed rule change would enhance the resiliency of DTC's loss allocation process by (1) requiring a defined contribution of DTC corporate funds to a loss, (2) introducing an Event Period, and (3) 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. Together, these proposed rule changes would (i) create greater certainty for Participants regarding DTC's obligation towards a loss, (ii) more clearly specify DTC's and Participants' obligations toward a loss and balance the need to manage the risk of sequential defaults and other potential loss events against Participants' need for certainty concerning their maximum exposures, and (iii) provide Participants the opportunity to limit their exposure to DTC by capping their exposure to loss allocation. Reducing the risk of uncertainty to DTC, its Participants and the market overall would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Therefore, DTC believes that the proposed rule change to enhance the resiliency of DTC's loss allocation process is consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

The proposed rule change is also consistent with Rules 17Ad–22(e)(7)(i), 17Ad–22(e)(13) and (e)(23)(i), promulgated under the Act.[59]

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

[57] 12 U.S.C. 5464(b).

[58] *Id.*

[59] 17 CFR 240.17Ad–22(e)(7)(i), (e)(13) and (e)(23)(i).

[60] *Id.* at 240.17Ad–22(e)(7)(i).

[61] *Id.* at 240.17Ad–22(e)(13).

[62] *Id.* at 240.17Ad–22(e)(23)(i).

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.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received,[63] unless extended as described below. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.[64]

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[65] the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.

Here, as the Commission has not requested any additional information, the date that is 60 days after DTC filed the Advance Notice with the Commission is February 16, 2018. However, the Commission is extending the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act[66] because the Commission finds that the Advance Notice raises complex issues. Specifically, the proposed changes are substantial, detailed, and interrelated to corresponding proposals by NSCC and FICC.[67] The proposed changes would provide a comprehensive revision to such loss allocation process when addressing losses from either a Participant Default or a non-default event. In doing so, DTC would clarify certain elements of, introduce new concepts to, and modify other aspects of its loss allocation waterfall as described above. Furthermore, the proposed changes would align the loss allocation rules across all three DTCC Clearing Agencies, in order to help provide consistent treatment of the rules, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies.

Accordingly, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[68] the Commission is extending the review period of the Advance Notice to April 17, 2018 which is the date by which the Commission shall notify the clearing agency of any objection regarding the Advance Notice, unless the Commission requests further information for consideration of the Advance Notice (SR–DTC–2017–804).[69]

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[70]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–2017–804 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–2017–804. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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–2017–804 and should be submitted on or before February 14, 2018.

By the Commission.

Eduardo A. Aleman

Assistant Secretary.

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[63] 12 U.S.C. 5465(e)(1)(G).

[64] 12 U.S.C. 5465(e)(1)(F).

[65] 12 U.S.C. 5465(e)(1)(H).

[66] *Id.*

[67] *Supra* note 5 (listing the corresponding proposals by NSCC and FICC).

[68] 12 U.S.C. 5465(e)(1)(H).

[69] This extension extends the time periods under Sections 806(e)(1)(E) and (G) of the Clearing Supervision Act. 12 U.S.C. 5465(e)(1)(E) and (G).

[70] *See supra* note 2 (concerning the clearing agency's related proposed rule change).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82579; File No. SR–DTC–2017–803]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Extension of the Review Period of an Advance Notice To Adopt a Recovery & Wind-Down Plan and Related Rules

January 24, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') and Rule

19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–DTC–2017–803 (''Advance Notice'') as described in Items I and II below, which Items have been prepared by the clearing agency.[2] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons and to extend the review period of the Advance Notice for an additional 60 days pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[3]

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

The advance notice of DTC would propose to (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 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 Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. 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 and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice 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.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Description of Proposed Changes

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

[1] 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively.

[2] On December 18, 2017, DTC filed the Advance Notice as a proposed rule change (SR–DTC–2017–021) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.*

[3] 12 U.S.C. 5465(e)(1)(H).

[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.*

[5] 17 CFR 240.17Ad–22(e)(3)(ii).

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 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

[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.

[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.

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 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

[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.*

[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.

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 risk 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 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

[18] The Plan defines 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.

[20] DTC's liquidity risk management strategy, including the manner in which DTC would deploy liquidity tools as well as its intraday use of liquidity, is described in the Clearing Agency Liquidity Risk Management Framework. *See* Securities Exchange Act Release No. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR–DTC–2017–004, SR–DTC–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 No. 80485 (April 19, 2017), 82 FR 19131 (April 25, 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.

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]

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

[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 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).

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 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,

[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.

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, 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

[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.*

[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.

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-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

[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.

[45] *See supra* note 6.

[46] *See supra* note 6.

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-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.

Expected Effect on and Management of Risk

DTC believes the proposal to adopt the R&W Plan and the Proposed Rules would enable it to better manage its risks. As described above, the Recovery Plan would identify the recovery tools and the risk management activities that DTC may use to address risks of uncovered losses or shortfalls resulting from a Participant default and losses arising from non-default events. By creating a framework for its management of risks across an evolving stress scenario and providing a roadmap for actions it may employ to monitor and, as needed, stabilize its financial condition, the Recovery Plan would strengthen DTC's ability to manage risk. The Wind-down Plan would also enable DTC to better manage its risks by establishing the strategy and framework for its orderly wind-down and the transfer of DTC's business, including the transfer of the securities inventory and establishment of the Participant and Pledgee securities accounts on the books

[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.

of the transferee, when the Wind-down Plan is triggered. By creating clear mechanisms for the transfer of DTC's membership and business, the Wind-down Plan would facilitate continued access to DTC's critical services and minimize market impact of the transfer and enable DTC to better manage risks related to the wind-down of DTC.

DTC believes the Proposed Rules would enable it to better manage its risks by facilitating, and providing a legal basis for, the implementation of critical aspects of the R&W Plan. The Proposed Rules would provide Participants with transparency around those provisions of the R&W Plan that relate to their and DTC's rights, responsibilities and obligations. Therefore, DTC believes the Proposed Rules would enable it to better manage its risks by providing this transparency and creating some certainty, to the extent practicable, around the occurrence of a Market Disruption Event (as such term is defined in the Proposed Rule), and around the implementation of the Wind-down Plan.

Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[48] Section 805(a)(2) of the Clearing Supervision Act[49] also authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities, like DTC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[50] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.

DTC believes that the proposed change is consistent with Section 805(b) of the Clearing Supervision Act because it is designed to address each of these objectives. The Recovery Plan and the proposed Force Majeure Rule would promote robust risk management and would reduce systemic risks by providing DTC with a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Further, the Recovery Plan would identify the triggers of recovery tools, but would not provide that those triggers necessitate the use of that tool. Instead, the Recovery Plan would provide that the triggers of these tools lead to escalation to an appropriate management body, which would have authority and flexibility to respond appropriately to the situation. Essentially, the Recovery Plan and the proposed Force Majeure Rule are designed to minimize losses to both DTC and its Participants by giving DTC the ability to determine the most appropriate way to address each stress situation. This approach would allow for proper 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 situation, and would reduce systemic risks related to the implementation of the Recovery Plan and the underlying recovery tools.

The Wind-down Plan and the proposed Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would promote safety and soundness and would support the stability of the broader financial system because they would establish a framework for the orderly wind-down of DTC's business and would set forth clear mechanics for the transfer of its critical services and membership as well as clear provisions concerning the transfer of the securities inventory that DTC holds in fungible bulk on behalf of its Participants. By designing the Wind-down Plan and the proposed Wind-down Rule to provide for the continued access to DTC's critical services and membership, DTC believes they would promote safety and soundness and would support stability in the broader financial system in the event the Wind-down Plan is implemented.

By assisting DTC to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, as described above, DTC believes the proposal is consistent with Section 805(b) of the Clearing Supervision Act.[51]

DTC also 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,[52] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii) under the Act,[53] and the R&W Plan is consistent with Rule 17Ad–22(e)(15)(ii) under the Act,[54] 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.[55] 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

[48] 12 U.S.C. 5461(b).

[49] *Id.* at 5464(a)(2).

[50] *Id.* at 5464(b).

[51] *Id.*

[52] 15 U.S.C. 78q–1(b)(3)(F).

[53] 17 CFR 240.17Ad–22(e)(3)(ii).

[54] *Id.* at 240.17Ad–22(e)(15)(ii).

[55] 15 U.S.C. 78q–1(b)(3)(F).

securities inventory it holds in fungible bulk for Participants. By doing so, the 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.[56]

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.[57] The R&W Plan and each of the Proposed Rules are designed to meet the requirements of Rule 17Ad–22(e)(3)(ii).

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.[58] 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).[59]

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).[60]

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,[61] 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).[62]

Therefore, DTC 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 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

[56] *Id.*

[57] 17 CFR 240.17Ad–22(e)(3)(ii).

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.* at 240.19b–4.

[62] *Supra* note 38.

[63] 17 CFR 240.17Ad–22(e)(3)(ii).

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 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).[65]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received,[66] unless extended as described below. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.[67]

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[68] the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.

Here, as the Commission has not requested any additional information, the date that is 60 days after DTC filed the Advance Notice with the Commission is February 16, 2018. However, the Commission is extending the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act[69] because the Commission finds the Advance Notice is both novel and complex, as discussed below.

The Advance Notice is novel because it concerns a matter of first impression for the Commission. Specifically, it concerns a recovery and wind-down plan that has not been part of the Commission's regulatory framework for registered clearing agencies until the recent adoption of Rule 17Ad–22(e)(3)(ii) under the Act.[70]

Rule 17Ad–22(e)(3)(ii) under the Act[71] requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by DTC, which includes 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. The Commission has not yet considered such a plan pursuant to Rule 17Ad–22(e)(3)(ii) under the Act.[72]

The Advance Notice is complex because the proposed changes are substantial, detailed, and interrelated with other risk management practices at the clearing agency. The Advance Notice is substantial because it is designed to comprehensively address how the clearing agency would implement a recovery or wind-down plan. For example, according to the clearing agency, the R&W Plan would provide, among other things, (i) an overview of the business of DTC and its parent, DTCC; (ii) an analysis of DTC's intercompany arrangements and critical links to other 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 certain 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 Advance Notice is detailed because it articulates the step-by-step process the clearing agency would undertake to implement a recovery or wind-down plan.

The Advance Notice is interrelated with other risk management practices at the clearing agency because the R&W Plan concerns some existing rules that address risk management as well as proposed rules that would further address risk management. For example, according to the clearing agency, many of the tools available to the clearing agency that would be described in the R&W Plan are the clearing agency's existing, business-as-usual risk management and default management tools, which would continue to be applied in scenarios of increasing stress. The Advance Notice also proposes new rules, such as the proposed market disruption and force majeure rule,[73] and contemplates application of the rules proposed in the Loss Allocation Filing as an integral part of the operation of the R&W Plan.[74]

Accordingly, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[75] the Commission is extending the review period of the Advance Notice to April 17, 2018 which is the date by which the Commission shall notify the clearing agency of any objection regarding the Advance Notice, unless the Commission requests further information for consideration of the Advance Notice (SR–DTC–2017–803).[76]

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required

[64] *Id.* at 240.17Ad–22(e)(15)(ii).

[65] *Id.*

[66] 12 U.S.C. 5465(e)(1)(G).

[67] 12 U.S.C. 5465(e)(1)(F).

[68] 12 U.S.C. 5465(e)(1)(H).

[69] *Id.*

[70] Securities Exchange Act Release 78961 (September 28, 2016), 81 FR 70786 (October 13, 2017) (S7–03–14).

[71] 17 CFR 240.17Ad–22(e)(3)(ii).

[72] *Id.*

[73] Proposed DTC Rule 38 (Market Disruption and Force Majeure).

[74] *See supra* note 8.

[75] 12 U.S.C. 5465(e)(1)(H).

[76] This extension extends the time periods under Sections 806(e)(1)(E) and (G) of the Clearing Supervision Act. 12 U.S.C. 5465(e)(1)(E) and (G).

with respect to the proposal are completed.[77]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–2017–803 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–2017–803. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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–2017–803 and should be submitted on or before February 14, 2018.

[77] *See supra* note 2 (concerning the clearing agency's related proposed rule change).

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01688 Filed 1–29–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 1, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Jackson, as duty officer, voted to consider the items listed for the closed meeting in closed session, and determined that Commission business required consideration earlier than one week from today. No earlier notice of this meeting was practicable.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Litigation matters;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: January 26, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–01902 Filed 1–26–18; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82576; File No. SR–OCC–2018–001]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Fee Policy

January 24, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2018, The Options Clearing Corporation (''OCC'') 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 OCC. 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 OCC would make certain revisions to OCC's Fee Policy to reduce the permitted implementation time for proposed changes to its Schedule of Fees. Under the proposed rule change, the Fee Policy would provide that any change to the Schedule of Fees resulting from a review of OCC's fees by the Board of Directors (''Board'') as stipulated under the Fee Policy would be implemented no sooner than 30 days from the date of the filing of the proposed fee change with the Commission, rather than the minimum 60-day period provided for currently in the Fee Policy.

The Fee Policy is included as confidential Exhibit 5 to the filing. Material proposed to be added to the Fee Policy as currently in effect is marked by underlining and material proposed to be deleted is marked in strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b\4.

[3] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this proposed rule change is to amend OCC's Fee Policy [4] to provide that any change to OCC's Schedule of Fees resulting from a review of OCC's fees by the Board as stipulated under the Fee Policy [5] would be implemented no sooner than 30 days following the filing of the revised Schedule of Fees as a proposed rule change with the Commission, rather than no sooner than 60 days after filing. Under Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934, as amended (''Act''),[6] a proposed rule change takes effect upon filing with the Commission if it is designated by OCC as establishing or changing a due, fee or other charge on any person. This proposed rule change, however, specifically concerns the time frame in which OCC permits itself to implement any proposed fee change under its Fee Policy.

In General, Article IX, Section 9 of OCC's By-Laws requires that OCC's fee structure be designed to: (1) Cover OCC's operating expenses plus a business risk buffer; (2) maintain reserves deemed reasonably necessary by OCC's Board; and (3) accumulate an additional surplus deemed advisable by the Board to permit OCC to meet its obligations to its Clearing Members and the public.[7] In connection with these requirements, OCC has adopted a Fee Policy under which the Board determines OCC's fee structure. As part of the Fee Policy, the Board reviews the existing Schedule of Fees on a quarterly basis to determine its appropriateness. Central to the Board's determination of the appropriate level of fees is the requirement to cover OCC's operating expenses plus an additional amount referred to as a ''Business Risk Buffer.'' The Business Risk Buffer is an amount of fee revenue that OCC targets above its anticipated operating expenses to allow for unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements. Under the Fee Policy, OCC generally sets clearing fees at a level designed to cover operating expenses plus a Business Risk Buffer of 25%. In determining the proper level of fees to achieve this goal, the Board may rely on a recommendation of OCC staff that is based on an analysis of, among other things, year-to-date revenue and operating expenses and projected clearing volume and operating expenses.

OCC believes that the current 60-day implementation period under the Fee Policy (i) increases the difficulty of projecting appropriate fee levels needed to cover OCC's operating expenses plus the Business Risk Buffer given the amount of time that passes between OCC's analysis and the implementation of the fee change, (ii) increases the risk that by the time the fee change is implemented, the extended delay in implementation may result in revenues that diverge further from the target the Business Risk Buffer (either higher or lower), and (iii) increases the impact of a fee change due to the delayed implementation timing.[8] As a result, OCC may need to make more frequent and/or more dramatic changes to its Schedule of Fees in order to maintain its target Business Risk Buffer, resulting in less stability in fees for OCC's participants. OCC believes that reducing the 60-day implementation period to 30 days would allow for fee adjustments that are based on revenue and expense data that is more current, and therefore projections that are more accurate. OCC believes the proposed rule change would therefore improve its ability to set fees at an appropriate level to meet its requirements under the Capital Plan while still providing adequate notice to its participants of any proposed fee changes.

(2) Statutory Basis

Section 17A(b)(3)(D) of the Act [9] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. In addition, Rule 17Ad–22(e)(21) [10] requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves. OCC believes the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act [11] and the rules thereunder because allowing earlier implementation of changes to OCC's Schedule of Fees would ensure that the fees charged to Clearing Members are based on based on revenue and expense data that is more current, and therefore projections that are more accurate. As a result, OCC believes it would be able to implement fee changes that are more accurately calibrated to meet the requirements of its Fee Policy and Capital Plan, which in turn would foster the equitable allocation of reasonable dues, fees and other charges among Clearing Members. OCC also believes that the proposed rule change is consistent with Rule 17Ad–22(e)(21) [12] because the shortened implementation period would improve OCC's ability to implement a Schedule of Fees that is based on revenue and expense data that is more current and indicative of OCC's business, and therefore, the change would enhance OCC's ability to be cost-effective in meeting the requirements of its Clearing Members.

[4] OCC's Fee Policy was adopted as part of OCC's plan for raising additional capital (''Capital Plan''), which was put in place in light of proposed regulatory capital requirements applicable to systemically important financial market utilities, such as OCC. *See* Exchange Act Release No. 34–74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR–OCC–2015–02); Exchange Act Release No. 34–74387 (February 26, 2015), 80 FR 12215 (March 6, 2015) (SR–OCC–2014–813) (''Approval Orders''). BATS Global Markets, Inc., BOX Options Exchange LLC, KCG Holdings, Inc., Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP each filed petitions for review of the Approval Order, challenging the action taken by delegated authority. Following review of these petitions, on August 8, 2017, the U.S. Court of Appeals for the DC Circuit remanded the Approval Orders to the Commission to further analyze whether the Capital Plan is consistent with the Securities Exchange Act of 1934. *Susquehanna Int'l Grp., LLP* v. *SEC,* 866 F.3d 442 (DC Cir. 2017). While the Commission further analyzes the Capital Plan, it remains in effect as originally approved by the Commission. *See id.*

[5] OCC notes that authority to review and approve changes to OCC's fees pursuant to the Capital Plan has been delegated to the Compensation and Performance Committee of the Board. *See* OCC Compensation and Performance Committee Charter, *available at: http://www.optionsclearing.com/components/docs/about/corporate-information/performance_committee_charter.pdf.*

[6] *See* 15 U.S.C. 78s(b)(3)(A)(ii). Regarding any such proposed rule change that becomes immediately effective, however, the Commission also has certain conditional authority to summarily temporarily suspend the change and institute proceedings to determine whether to approve or disapprove it. *See* 15 U.S.C. 78s(b)(3)(C).

[7] OCC notes that clauses two and three above would be invoked only at the discretion of OCC's Board and in extraordinary circumstances.

[8] OCC notes that, as a practical matter, it typically implements changes to its Schedule of Fees on the first of the month. As a result, the actual delay in implementing a proposed fee change may be significantly longer than 60 days depending on the timing of Board approval of any fee change and subsequent filing of the associated proposed rule change.

[9] 15 U.S.C. 78q–1(b)(3)(D).

[10] 17 CFR 240.17Ad–22(e)(21).

[11] 15 U.S.C. 78q–1(b)(3)(D).

[12] 17 CFR 240.17Ad–22(e)(21).

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [13] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC believes that the proposed rule change would not have any impact or impose a burden on competition. The proposed changes to the Fee Policy would not disadvantage or favor any particular user in relationship to another user because the potential for earlier implementation of changes to the Schedule of Fees would apply equally to all Clearing Members and market participants. Moreover, the proposed rule change would continue to allow for a notification period of at least 30 days following the filing of a revised Schedule of Fees with the Commission before such a proposed fee change could be implemented. As a result, OCC believes that the proposed rule change would not have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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.

OCC respectfully requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2)(C)(iii) of the Act.[14] OCC believes that good cause exists for the Commission to accelerate the effectiveness of the proposed rule change because the proposed changes to the Fee Policy would improve OCC's ability to implement fee changes that are more accurately calibrated to meet the requirements of its Fee Policy and Capital Plan. As describe above, OCC believes that the current 60-day implementation period under the Fee Policy (i) increases the difficulty of projecting appropriate fee levels needed to cover OCC's operating expenses plus the Business Risk Buffer given the amount of time that passes between OCC's analysis and the implementation of the fee change, (ii) increases the risk that by the time the fee change is implemented, the extended delay in implementation may result in revenues that diverge further from the target the Business Risk Buffer (either higher or lower), and (iii) increases the impact of a fee change due to the delayed implementation timing. As a result, OCC may need to make more frequent and/or more dramatic changes to its Schedule of Fees in order to maintain its target Business Risk Buffer, resulting in less stability in fees for OCC's participants. OCC believes that reducing the 60-day implementation period to 30 days would allow for fee adjustments that are based on revenue and expense data that is more current, and therefore projections that are more accurate and fee levels that are generally more stable. Accordingly, OCC believes the proposed rule change promotes OCC's ability to comply with its obligations under the Act to be efficient and effective in meeting the requirements of its participants and the markets it serves.

While the proposed rule change would reduce the 60-day notification period prior to implementing fee changes under the Fee Policy, any proposed fee change would still require at least a 30-day notification period prior to implementation and would continue to be subject to the Commission's rule filing process, including the notice and public comment period. OCC believes that the proposed 30-day implementation period, along with the Commission's rule filing process, would continue to provide Clearing Members and other market participants with appropriate and adequate notice of fee changes so that they are able to take any necessary action to prepare for the proposed fee change. Moreover, participants would continue to have an opportunity to comment on any fee changes prior to such fee change being implemented, and the Commission would continue to review all such fee changes as part of the proposed rule change process. OCC notes that the proposed rule change would not alter the manner in which OCC determines potential fee changes under its Fee Policy or the applicability of any such fee changes to its Clearing Members and market participants.

For all of the reasons above, OCC requests that the Commission approve the proposed rule change on an accelerated basis because there is good cause consistent with the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2018–001 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–OCC–2018–001. 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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

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

[13] 15 U.S.C. 78q–1(b)(3)(I).

[14] 15 U.S.C. 78s(b)(2)(C)(iii).

that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2018–001 and should be submitted on or before February 14, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01676 Filed 1–29–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82581; File No. SR–NSCC–2017–805]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Extension of the Review Period of an Advance Notice To Adopt a Recovery & Wind-down Plan and Related Rules

January 24, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–NSCC–2017–805 (''Advance Notice'') as described in Items I and II below, which Items have been prepared by the clearing agency.[2] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons and to extend the review period of the Advance Notice for an additional 60 days pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[3]

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

The advance notice of NSCC proposes to (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 advance notice would also propose 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.

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 Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. 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 and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice 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.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Description of Proposed Changes

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

[15] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively.

[2] On December 18, 2017, NSCC filed the Advance Notice as a proposed rule change (SR–NSCC–2017–017) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.*

[3] 12 U.S.C. 5465(e)(1)(H).

[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).

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 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.

[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.

[10] 17 CFR 240.17Ad–22(e)(3)(ii).

(''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) 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 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

[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.

[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.

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]

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

[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, 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.

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 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

[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.

[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.

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 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

[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).

[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.

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.

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

[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.*

[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.

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 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

[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.

[47] *See supra* note 6.

[48] *See supra* note 6.

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 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 defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of NSCC's business to a Transferee (''Transfer Time''), (2) the last day that transactions may be submitted to NSCC for processing (''Last Transaction Acceptance Date''), and (3) the last day that transactions submitted to NSCC will be settled (''Last Settlement Date'').

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

[49] 12 U.S.C. 5381–5394.

[50] 12 U.S.C. 1811 *et seq.*

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 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

[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.

[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.

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.

Expected Effect on and Management of Risk

NSCC believes the proposal to adopt the R&W Plan and the Proposed Rules would enable it to better manage its risks. As described above, the Recovery Plan would identify the recovery tools and the risk management activities that NSCC may use to address risks of uncovered losses or shortfalls resulting from a Member default and losses arising from non-default events. By creating a framework for its management of risks across an evolving stress scenario and providing a roadmap for actions it may employ to monitor and, as needed, stabilize its financial condition, the Recovery Plan would strengthen NSCC's ability to manage risk. The Wind-down Plan would also enable NSCC to better manage its risks by establishing the strategy and framework for its orderly wind-down and the transfer of NSCC's business when the Wind-down Plan is triggered. By creating clear mechanisms for the transfer of NSCC's membership and business, the Wind-down Plan would facilitate continued access to NSCC's critical services and minimize market impact of the transfer and enable NSCC to better manage risks related to its wind-down.

NSCC believes the Proposed Rules would enable it to better manage its risks by facilitating, and providing a legal basis for, the implementation of critical aspects of the R&W Plan. The Proposed Rules would provide Members and Limited Members with transparency around those provisions of the R&W Plan that relate to their and NSCC's rights, responsibilities and obligations. Therefore, NSCC believes the Proposed Rules would enable it to better manage its risks by providing this transparency and creating certainty, to the extent practicable, around the occurrence of a Market Disruption Event or a Corporation Default (as such terms are defined in the respective Proposed Rules), and around the implementation of the Wind-down Plan.

Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[53] Section 805(a)(2) of the Clearing Supervision Act[54] also authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities, like NSCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[55] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.

NSCC believes that the proposal is consistent with Section 805(b) of the Clearing Supervision Act because it is designed to address each of these objectives. The Recovery Plan and the proposed Force Majeure Rule would promote robust risk management and would reduce systemic risks by providing NSCC with a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Further, the Recovery Plan would identify the triggers of recovery tools, but would not provide that those triggers necessitate the use of those tools. Instead, the Recovery Plan would provide that the triggers of these tools lead to escalation to an appropriate management body, which would have the authority and flexibility to respond appropriately to the situation. Essentially, the Recovery Plan and the proposed Force Majeure Rule are designed to minimize losses to both NSCC and Members by giving NSCC the ability to determine the most appropriate way to address each stress situation. This approach would allow for proper evaluation of the situation and the possible impacts of the use of the available recovery tools in order to minimize the negative effects of the stress situation, and would reduce systemic risks related to the implementation of the Recovery Plan and the underlying recovery tools.

The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would promote safety and soundness and would support the stability of the broader financial system, because they would establish a framework for the orderly wind-down of NSCC's business and would set forth clear mechanics for the transfer of its critical services and membership, as

[53] 12 U.S.C. 5461(b).

[54] *Id.* at 5464(a)(2).

[55] *Id.* at 5464(b).

well as clear provisions concerning the treatment of open, guaranteed CNS transactions in the event of NSCC's default. By designing the Wind-down Plan and these Proposed Rules to enable the continuity of NSCC's critical services and membership, NSCC believes they would promote safety and soundness and would support stability in the broader financial system in the event the Wind-down Plan is implemented.

By assisting NSCC to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, as described above, NSCC believes the proposal is consistent with Section 805(b) of the Clearing Supervision Act.[56]

NSCC also 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,[57] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii) under the Act,[58] and the R&W Plan is consistent with Rule 17Ad–22(e)(15)(ii) under the Act,[59] 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.[60] 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 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.[61]

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.[62] The R&W Plan and the Proposed Rules are designed to meet the requirements of Rule 17Ad–22(e)(3)(ii).[63]

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.[64] 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-

[56] *Id.*

[57] 15 U.S.C. 78q–1(b)(3)(F).

[58] 17 CFR 240.17Ad–22(e)(3)(ii).

[59] *Id.* at 240.17Ad–22(e)(15)(ii).

[60] 15 U.S.C. 78q–1(b)(3)(F).

[61] *Id.*

[62] 17 CFR 240.17Ad–22(e)(3)(ii).

[63] *Id.*

[64] *Id.*

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).[65]

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).[66]

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,[67] 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 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).[68]

Therefore, NSCC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii).[69]

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.[70] 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).[71]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received,[72] unless extended as described below. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.[73]

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[74] the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.

Here, as the Commission has not requested any additional information, the date that is 60 days after NSCC filed the Advance Notice with the Commission is February 16, 2018. However, the Commission is extending the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act[75] because the Commission finds the Advance Notice is both novel and complex, as discussed below.

The Advance Notice is novel because it concerns a matter of first impression for the Commission. Specifically, it concerns a recovery and wind-down plan that has not been part of the Commission's regulatory framework for registered clearing agencies until the

[65] *Id.*

[66] *Id.*

[67] *Id.* at 240.19b-4.

[68] *Supra* note 41.

[69] 17 CFR 240.17Ad–22(e)(3)(ii).

[70] *Id.* at 240.17Ad–22(e)(15)(ii).

[71] *Id.*

[72] 12 U.S.C. 5465(e)(1)(G).

[73] 12 U.S.C. 5465(e)(1)(F).

[74] 12 U.S.C. 5465(e)(1)(H).

[75] *Id.*

recent adoption of Rule 17Ad–22(e)(3)(ii) under the Act.[76]

Rule 17Ad–22(e)(3)(ii) under the Act[77] requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by NSCC, which includes 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. The Commission has not yet considered such a plan pursuant to Rule 17Ad–22(e)(3)(ii) under the Act.[78]

The Advance Notice is complex because the proposed changes are substantial, detailed, and interrelated with other risk management practices at the clearing agency. The Advance Notice is substantial because it is designed to comprehensively address how the clearing agency would implement a recovery or wind-down plan. For example, according to the clearing agency, the R&W Plan would provide, among other things, (i) an overview of the business of NSCC and its parent, DTCC; (ii) an analysis of NSCC's intercompany arrangements and critical links to other 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 certain 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 Advance Notice is detailed because it articulates the step-by-step process the clearing agency would undertake to implement a recovery or wind-down plan.

The Advance Notice is interrelated with other risk management practices at the clearing agency because the R&W Plan concerns some existing rules that address risk management as well as proposed rules that would further address risk management. For example, according to the clearing agency, many of the tools available to the clearing agency that would be described in the R&W Plan are the clearing agency's existing, business-as-usual risk management and default management tools, which would continue to be applied in scenarios of increasing stress. The Advance Notice also proposes new rules, such as the proposed market disruption and force majeure rule,[79] and contemplates application of the rules proposed in the Loss Allocation Filing as an integral part of the operation of the R&W Plan.[80]

Accordingly, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[81] the Commission is extending the review period of the Advance Notice to April 17, 2018 which is the date by which the Commission shall notify the clearing agency of any objection regarding the Advance Notice, unless the Commission requests further information for consideration of the Advance Notice (SR–NSCC–2017–805).[82]

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[83]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–2017–805 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–2017–805. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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–2017–805 and should be submitted on or before February 14, 2018.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01690 Filed 1–29–18; 8:45 am]

BILLING CODE 8011–01–P

[76] Securities Exchange Act Release 78961 (September 28, 2016), 81 FR 70786 (October 13, 2017) (S7–03–14).

[77] 17 CFR 240.17Ad–22(e)(3)(ii).

[78] *Id.*

[79] Proposed NSCC Rule 60 (Market Disruption and Force Majeure).

[80] *See supra* note 8.

[81] 12 U.S.C. 5465(e)(1)(H).

[82] This extension extends the time periods under Sections 806(e)(1)(E) and (G) of the Clearing Supervision Act. 12 U.S.C. 5465(e)(1)(E) and (G).

[83] *See supra* note 2 (concerning the clearing agency's related proposed rule change).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82580; File No. SR–FICC–2017–805]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Extension of the Review Period of an Advance Notice To Adopt a Recovery & Wind-Down Plan and Related Rules

January 24, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–FICC–2017–805 (''Advance Notice'') as described in Items I and II below, which Items have been prepared by the clearing agency.[2] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons and to extend the review period of the Advance Notice for an additional 60 days pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[3]

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

The Advance Notice of FICC proposes to 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 Advance Notice also proposes to (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 Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. 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 and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice 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 Members in order to provide them with notice of the proposal. FICC will notify the Commission of any written comments received by FICC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Description of Proposed Changes

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

[1] 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively.

[2] On December 18, 2017, FICC filed the Advance Notice as a proposed rule change (SR–FICC–2017–021) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.*

[3] 12 U.S.C. 5465(e)(1)(H).

[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.

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 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.

[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).

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 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

[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.

[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.*

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 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

[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.

[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).

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 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

[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.

[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

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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 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,

identified in the Plan for the Corridor Indicator to which the action relates.

[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).

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 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

[35] *See supra* note 30.

[36] *See supra* note 30.

[37] *See supra* note 9.

[38] *See supra* note 7.

[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.

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 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

[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.

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 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

[47] *See supra* note 7.

[48] *See supra* note 7.

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

[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.

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, 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.

Expected Effect on and Management of Risk

FICC believes the proposal to adopt the R&W Plan and the Proposed Rules would enable it to better manage its risks. As described above, the Recovery Plan would identify the recovery tools and the risk management activities that FICC may use to address risks of uncovered losses or shortfalls resulting from a Member default and losses arising from non-default events. By creating a framework for its management of risks across an evolving stress scenario and providing a roadmap for actions it may employ to monitor and, as needed, stabilize its financial condition, the Recovery Plan would strengthen FICC's ability to manage risk. The Wind-down Plan would also enable FICC to better manage its risks by establishing the strategy and framework for its orderly wind-down and the transfer of FICC's business when the Wind-down Plan is triggered. By creating clear mechanisms for the transfer of the Divisions' membership and business, the Wind-down Plan would facilitate continued access to FICC's critical services and minimize market impact of the transfer and enable FICC to better manage risks related to its wind-down.

FICC believes the Proposed Rules would enable it to better manage its risks by facilitating, and providing a legal basis for, the implementation of critical aspects of the R&W Plan. The Proposed Rules would provide Members and Limited Members with transparency around those provisions of the R&W Plan that relate to their and FICC's rights, responsibilities and obligations. Therefore, FICC believes the Proposed Rules would enable it to better manage its risks by providing this transparency and creating certainty, to the extent practicable, around the occurrence of a Market Disruption Event (as such term is defined in the proposed Force Majeure Rule), and around the implementation of the Wind-down Plan.

Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act, is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[51] Section 805(a)(2) of the Clearing Supervision Act [52] also authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities, like FICC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act [53] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.

FICC believes that the proposal is consistent with Section 805(b) of the Clearing Supervision Act because it is designed to address each of these objectives. The Recovery Plan and the proposed Force Majeure Rule would promote robust risk management and would reduce systemic risks by providing FICC with a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Further, the Recovery Plan would identify the triggers of recovery tools, but would not provide that those triggers necessitate the use of those tools. Instead, the Recovery Plan would provide that the triggers of these tools lead to escalation to an appropriate management body, which would have the authority and flexibility to respond appropriately to the situation. Essentially, the Recovery Plan and the proposed Force Majeure Rule are designed to minimize losses to both FICC and Members by giving FICC the ability to determine the most appropriate way to address each stress situation. This approach would allow for proper evaluation of the situation and the possible impacts of the use of the available recovery tools in order to minimize the negative effects of the stress situation, and would reduce systemic risks related to the implementation of the Recovery Plan and the underlying recovery tools.

The Wind-down Plan and the proposed Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would promote safety and soundness and would support the stability of the broader financial system, because they would establish a framework for the orderly wind-down of FICC's business and would set forth clear mechanics for the transfer of its critical services and the memberships of both Divisions. By designing the Wind-down Plan and this Proposed Rule to enable the continuity of FICC's critical services and membership, FICC believes they would promote safety and soundness and would support stability in the broader financial system in the event the Wind-down Plan is implemented.

By assisting FICC to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, as described above, FICC believes the proposal is consistent with Section 805(b) of the Clearing Supervision Act.[54]

FICC also 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

[51] 12 U.S.C. 5461(b).

[52] *Id.* at 5464(a)(2).

[53] *Id.* at 5464(b).

[54] *Id.*

changes to the Rules and the EPN Rules are consistent with Section 17A(b)(3)(F) of the Act,[55] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii) under the Act,[56] and the R&W Plan is consistent with Rule 17Ad–22(e)(15)(ii) under the Act,[57] 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.[58] 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 its 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.[59]

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.[60] The R&W Plan and each of the Proposed Rules are designed to meet the requirements of Rule 17Ad–22(e)(3)(ii).[61]

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.[62] 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 requirements of Rule 17Ad–22(e)(3)(ii).[63]

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).[64]

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

[55] 15 U.S.C. 78q–1(b)(3)(F).

[56] 17 CFR 240.17Ad–22(e)(3)(ii).

[57] *Id.* at 240.17Ad–22(e)(15)(ii).

[58] 15 U.S.C. 78q–1(b)(3)(F).

[59] *Id.*

[60] 17 CFR 240.17Ad–22(e)(3)(ii).

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

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,[65] 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).[66]

Therefore, FICC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii).[67]

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.[68] 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).[69]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received,[70] unless extended as described below. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.[71]

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[72] the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.

Here, as the Commission has not requested any additional information, the date that is 60 days after FICC filed the Advance Notice with the Commission is February 16, 2018. However, the Commission is extending the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act[73] because the Commission finds the Advance Notice is both novel and complex, as discussed below.

The Advance Notice is novel because it concerns a matter of first impression for the Commission. Specifically, it concerns a recovery and wind-down plan that has not been part of the Commission's regulatory framework for registered clearing agencies until the recent adoption of Rule 17Ad–22(e)(3)(ii) under the Act.[74]

Rule 17Ad–22(e)(3)(ii) under the Act[75] requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by FICC, which includes 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. The Commission has not yet considered such a plan pursuant to Rule 17Ad–22(e)(3)(ii) under the Act.[76]

The Advance Notice is complex because the proposed changes are substantial, detailed, and interrelated with other risk management practices at the clearing agency. The Advance Notice is substantial because it is

[65] *Id.* at 240.19b–4.

[66] *Supra* note 40.

[67] 17 CFR 240.17Ad–22(e)(3)(ii).

[68] *Id.* at 240.17Ad–22(e)(15)(ii).

[69] *Id.*

[70] 12 U.S.C. 5465(e)(1)(G).

[71] 12 U.S.C. 5465(e)(1)(F).

[72] 12 U.S.C. 5465(e)(1)(H).

[73] *Id.*

[74] Securities Exchange Act Release 78961 (September 28, 2016), 81 FR 70786 (October 13, 2017) (S7–03–14).

[75] 17 CFR 240.17Ad–22(e)(3)(ii).

[76] *Id.*

designed to comprehensively address how the clearing agency would implement a recovery or wind-down plan. For example, according to the clearing agency, the R&W Plan would provide, among other things, (i) an overview of the business of FICC and its parent, DTCC; (ii) an analysis of FICC's intercompany arrangements and an existing link to other 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 certain 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 Advance Notice is detailed because it articulates the step-by-step process the clearing agency would undertake to implement a recovery or wind-down plan.

The Advance Notice is interrelated with other risk management practices at the clearing agency because the R&W Plan concerns some existing rules that address risk management as well as proposed rules that would further address risk management. For example, according to the clearing agency, many of the tools available to the clearing agency that would be described in the R&W Plan are the clearing agency's existing, business-as-usual risk management and default management tools, which would continue to be applied in scenarios of increasing stress. The Advance Notice also proposes new rules, such as the proposed market disruption and force majeure rules,[77] and contemplates application of the rules proposed in the Loss Allocation Filing as an integral part of the operation of the R&W Plan.[78]

Accordingly, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[79] the Commission is extending the review period of the Advance Notice to April 17, 2018 which is the date by which the Commission shall notify the clearing agency of any objection regarding the Advance Notice, unless the Commission requests further information for consideration of the Advance Notice (SR–FICC–2017–805).[80]

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[81]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–2017–805 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–2017–805. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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–2017–805 and should be submitted on or before February 14, 2018.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01689 Filed 1–29–18; 8:45 am]

BILLING CODE 8011–01–P

[77] Proposed FICC GSD Rule 50 (Market Disruption and Force Majeure) and proposed FICC MBSD Rule 40 (Market Disruption and Force Majeure).

[78] *See supra* note 9.

[79] 12 U.S.C. 5465(e)(1)(H).

[80] This extension extends the time periods under Sections 806(e)(1)(E) and (G) of the Clearing Supervision Act. 12 U.S.C. 5465(e)(1)(E) and (G).

[81] *See supra* note 2 (concerning the clearing agency's related proposed rule change).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82577; File No. SR–Phlx–2018–09]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate and Amend Rule 1080(l)

January 24, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 16, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') 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 proposes to relocate and amend Rule 1080(l), entitled ''Directed Orders'' to new Rule 1068 with the same title. The Exchange is also proposing to amend Rule 1000(b) to add various definitions. The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

will also update cross references to Rule 1080(l) to reflect new Rule 1068.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to relocate Rule 1080(l), entitled ''Directed Orders'' to new Rule 1068 with the same title. The Exchange is also proposing to amend Rule 1000(b) to add various definitions. Both of these proposals will be discussed below. The Exchange will also update cross references to Rule 1080(l) to reflect new Rule 1068. The Exchange also proposes to add more detail concerning the PHLX Depth of Market data feed and the CTI data feed.

Directed Orders

The rule text concerning Directed Orders is currently located at Rule 1080(l). The Exchange proposes to relocate this rule to Rule 1068, which is currently reserved, and title the new rule ''Directed Orders.'' The Exchange also proposes to amend the current rule to add clarity to the current rule text. Rule 1080 is rather lengthy and breaking this rule into a separate rule will make the rule easier to locate. A Directed Order is currently defined as any order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM.

The Exchange proposes to delete references to the Exchange's trading system prior name ''AUTOM,'' which term is obsolete. The Exchange proposes to replace the term with System at proposed new Rule 1068(a)(i)(A), which below the Exchange is proposing to define at new Rule 1000(b)(45).

The Exchange proposes to amend the current rule text in new proposed Rule 1068(a)(ii), which currently states, ''[w]hen the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Specialist, SQT or RSQT is quoting at the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Rule 1014(g)(viii).'' The Exchange proposes to replace the word ''disseminated'' with the word ''best.'' The Exchange notes that if a non-displayed implied order is resting on the book at the best price, that order would execute against the Directed Order and therefore the word disseminated is not accurate. The Exchange proposes to amend the sentence to reflect the current operation of the System when the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Specialist, SQT or RSQT is quoting at the Exchange's best price, the Directed Order shall be automatically executed and allocated in accordance with Rule 1014(g)(viii). The Exchange seeks to execute all orders at the best available price without trading through an away market.

The Exchange is also proposing to remove the words ''by the specialist'' at proposed new Rule 1068(a)(iv) so that the new sentence states, ''If the Exchange's disseminated price is not the NBBO at the time of receipt of the Directed Order, the Directed Order shall be handled in accordance with Exchange rules.'' The reference to ''by the specialist'' is not accurate as the specialist does not handle these orders. The Exchange does not permit manual handling of orders in its current rules. The System handles all orders entered for submission. Specialists used to be responsible for manual executions. The adoption of Phlx XL, a predecessor trading system, eliminated manual executions of System orders; all orders entered into the System can only executed automatically by the System.[3] The removal of the words ''by the specialist'' makes the sentence accurate.

Definitions

The Exchange proposes to adopt new definitions in Rule 1000(b). Specifically, the Exchange proposes to adopt a definition for the word ''System'' at Rule 1000(b)(45), which parallels the definition of System at The Nasdaq Options Market LLC (''NOM'') and Nasdaq BX, Inc. (''BX'') Rules at Chapter VI, Section 1(a). The Exchange proposes to define ''System'' to mean the automated system for order execution and trade reporting owned and operated by the Exchange which comprises: (A) An order execution service that enables members to automatically execute transactions in System Securities and provides members with sufficient monitoring and updating capability to participate in an automated execution environment; (B) a trade reporting service that submits ''locked-in'' trades[4] for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a ''locked-in'' trading environment; and (C) the following data feeds:[5]

Top of PHLX Options (''TOPO'') is a direct data feed product that includes the Exchange's best bid and offer price, with aggregate size, based on displayable order and quoting interest on Phlx and last sale information for trades executed on Phlx. The data contained in the TOPO data feed is identical to the data simultaneously sent to the processor for the Options Price Regulatory Authority (''OPRA'') and subscribers of the data feed.

PHLX Orders is a real-time full limit order book data feed that provides pricing information for orders on the PHLX limit order book. PHLX Orders is currently provided as part of the TOPO Plus Orders data product. PHLX Orders provides real-time information to enable users to keep track of the single order book(s), single and Complex Orders, and Complex Order Live Auction (''COLA'') for all symbols listed on Phlx.

[3] *See* Securities and Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003–59)

[4] This refers to the process of submitting both sides of a trade for reporting and clearing, rather than performing a comparison process.

[5] These data feeds have all been previously addressed in proposed rule changes and are now being codified in this rule to parallel NOM and BX Options rules at Chapter VI, Section 1. *See* Securities Exchange Act Release Nos. 60877 (October 26, 2009), 74 FR 56255 (October 30, 2009) (SR–Phlx–2009–92) (addressing TOPO Plus Orders), 66993 (May 15, 2012), 77 FR 30043 (May 21, 2012)(SR–Phlx–2012–63) (addressing PHLX Orders), 66967 (May 11, 2012), 77 FR 29440 (May 17, 2012)(SR–Phlx–2012–60)(addressing PHLX Depth of Market) and 62155 (May 24, 2010), 75 FR 30081 (May 28, 2010)(SR-Phlx-2010–67)(addressing CTI). *See also* Securities Exchange Act Release No. 68517 (December 21, 2012), 77 FR 77134 (December 31, 2012) (SR–Phlx–2012–136) (regarding Order Exposure). The Phlx data feeds differ in content from the NOM and BX data feeds.

PHLX Depth of Market is a data product that provides: (1) Order and quotation information for individual quotes and orders on the PHLX book; (2) last sale information for trades executed on Phlx; (3) auction and option symbol directory information; and (4) an Imbalance Message which includes the symbol, side of the market, size of matched contracts, size of the imbalance, and price of the affected series.

Clearing Trade Interface (''CTI'') is a real-time clearing trade update message that is sent to a member after an execution has occurred and contains trade details (*e.g.* trade corrections, trade cancels, options directory messages, Complex Order Strategy messages, trading action messages, halt and system event messages). The information includes, among other things, the following: (1) The Clearing Member Trade Agreement or ''CMTA'' or OCC number; (2) Exchange badge or house number; (3) the Exchange internal firm identifier; and (4) an indicator which will distinguish electronic and non-electronically delivered orders; (5) liquidity indicators and transaction type for billing purposes; (6) capacity.[6]

This description tracks the language in NOM and BX Rules, Chapter VI, Section 1, except it reflects the data feeds applicable to Phlx. These data feeds are available to subscribers, subject to the Exchange's Pricing Schedule.[7] Specifically, with respect to the PHLX Depth of Market data product, the Exchange is proposing to add more detail concerning auction and option symbol directory information that is contained in the PHLX Depth of Market data product. The Exchange notes that this information was contained in the data feed at the time the data feed was filed. In addition to order and quotation information, auction information was available as well as the options symbol directories. The Exchange believes that this information is more specific to identify the content in the feed. The Exchange notes that any market participant may subscribe to this data feed. The Exchange also proposes to adopt the definition of ''System Securities'' at Rule 1000(b)(46). The Exchange proposes to describe System Securities to mean all options that are currently trading on the System. All other options shall be ''Non System Securities.'' This also parallels the comparable NOM and BX provisions,[8] although the Exchange does not at this time use the term Non System Securities in its rules.

The Exchange proposes to define the term ''Order'' at proposed Rule 1000(b)(47). The Exchange proposes to define Order as a single order submitted to the System by a member that is eligible to submit such orders. This is the same definition as contained in NOM and BX Rules at Chapter VI, Section 1(d).

The Exchange proposes to define the term ''System Book Feed'' at proposed Rule 1000(b)(48). The Exchange proposes to define System Book Feed as a data feed for System securities. This definition is similar to the definition contained in NOM and BX Rules, at Chapter VI, Section 1(h), and refers to the general process of gathering the Exchange's best bid and offer for dissemination to the OPRA.

The Exchange proposes to define the term ''Agency Order'' at proposed Rule 1000(b)(49). The term Agency Order shall mean any order entered on behalf of a public customer (which includes an order entered on behalf of a professional), and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. An agency order is currently defined in Rule 1080(b)(i)(A) as any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. The Exchange is making clear that professional orders are included in this general definition. The Exchange intends to remove the definition in Rule 1080(b)(i)(A) by filing a separate rule change.

Finally, the Exchange proposes to copy the definition of ''Off-Floor Broker Dealer Order'' currently contained in Rule 1080(b)(i)(C) to proposed Rule 1000(b)(50). The Exchange believes that the definition, which is utilized in other rules including Rule 1014 is better placed in Rule 1000. The Exchange intends to remove the definition in Rule 1080(b)(i)(C) by filing a separate rule change.

The Exchange believes that these definitions will serve to define key terms within the Rulebook to the benefit of the members. The Exchange also proposes to update a cross-reference to Rule 1080(l) within Rule 1014(g)(viii) to new Rule 1068.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by updating Rule 1080(l) and relocating it to new Rule 1068 to make it easier to locate and clarifying the current rule text. In addition, the Exchange proposes to add definitions to Rule 1000(b) to define key terms within the Rulebook to the benefit of the members.

The Exchange's proposal to update cross references to Rule 1080(l) to reflect new Rule 1068 are consistent with the Act because the new cross references will update the accuracy of the Rulebook with respect to the rule numbering.

The Exchange's proposal to delete obsolete references to the Exchange's trading system prior name ''AUTOM'' and utilize the term System, which is being defined in Rule 1000, is consistent with the Act because the replacement of a defined term will add clarity to the intended rule text. The Exchange's proposal to replace the word ''disseminated'' with the word ''best'' in new proposed Rule 1068(a)(ii), is consistent with the Act because the Exchange seeks to execute all orders at the best available price without trading through an away market. The current sentence is not accurate. The proposed text reflects the current operation of the System. The elimination of the words ''by the specialist'' at proposed new Rule 1068(a)(iv) is consistent with the Act because the elimination of the words will correct a current reference to a manual process which no longer exists today. The Exchange does not permit manual handling of orders in its current rules. The System handles all orders entered for submission. The removal of the words ''by the specialist'' makes the sentence accurate and clarifies the current operation of the System to the benefit of members.

[6] With respect to the CTI feed, the Exchange notes that that CTI is a tool for members to receive real-time trade details. The Exchange is adding information to demonstrate examples of trade details (*e.g.* trade corrections, trade cancels, options directory messages, Complex Order Strategy messages, trading action messages, halt and system event messages). The Exchange notes that this additional language is intended to provide more specificity regarding the CTI data feed product. This is not new information, rather the original rule change noted that real time trade details are included in the feed. *See* Securities and Exchange Act Release No. 75 FR 30081 (May 28, 2010) (SR–Phlx–2010–67).

[7] *See* Phlx's Pricing Schedule at Chapter IX.

[8] The NOM and BX definitions at Chapter VI, Section 1(b) refer to options traded pursuant to Chapter IV, which contains listing-like provisions. The Exchange does not believe this language is necessary, as all options must be listed pursuant to applicable listing rules.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

The Exchange's proposal to add definitions for System, System Securities, Order, System Book Feed which are similar to definitions contained in BX and NOM Rules and also are specific to operation of Phlx is consistent with the Act because these definitions will bring greater clarity to the use of those terms within the Rulebook. The Exchange's proposal to copy the current terms, Agency Order and Off-Floor Broker-Dealer Order, to Rule 1000(b) is consistent with the Act because these terms are universal to the Rulebook and can be more easily located within the general definitions.

The Exchange's proposal to memorialize the data feeds, which were previously filed with the Commission, within the text of its rules is consistent with the Act because the new rule text will bring greater clarity to the Rulebook. Specifically, with respect to the PHLX Depth of Market data product, the Exchange is proposing to add more detail concerning auction and option symbol directory information that is contained in the PHLX Depth of Market data product. The Exchange notes that this information was available in the data feed at the time the feed was filed. In addition to order and quotation information, auction information was available as well as the options symbol directories. The Exchange believes that adding this additional information is consistent with the Act because the new information is more specific to identify the content in the feed. The Exchange notes that any market participant may subscribe to this data feed.

The Exchange noted in the original filing [11] that CTI is a tool for members to receive real-time trade details. The Exchange is adding information to demonstrate examples of trade details (*e.g.* trade corrections, trade cancels, options directory messages, Complex Order Strategy messages, trading action messages, halt and system event messages). The Exchange believes that this additional language is consistent with the Act because it provides more specificity regarding the CTI data feed product and provides greater transparency as to the information contained in the data product.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes to new Rule 1068 serve to relocate and update the current rule text to eliminate an obsolete term, correct the text to reflect the current operation of the System and eliminate a reference to a manual Specialist process which no longer exists today. The addition of definitions to Rule 1000(b) does not impose an undue burden on competition, rather the definitions will bring greater clarity to the use of those terms within the Rulebook.

The Exchange also notes that in addition to the rule text which was previously filed for the PHLX Depth of Market data product, the Exchange is proposing to add more detail concerning auction and option symbol directory information that is contained in the PHLX Depth of Market data product. The Exchange notes that this detail concerning auctions and options symbol directories is more specific and although not noted in the prior rule change, adds more detail to the type of information that is disseminated in the data feed. The Exchange notes that any market participant may subscribe to this data feed.

The Exchange's additional detail in the CTI data feed product adds more detail to the description in the original filing [12] concerning real-time trade details. The Exchange offers examples of trade details (*e.g.* trade corrections, trade cancels, options directory messages, Complex Order Strategy messages, trading action messages, halt and system event messages) in this proposal. The Exchange believes that this additional language does not impose an undue burden on competition because the greater detail adds more specificity to the CTI data feed product and provides greater transparency as to the information contained in the data product. Further, the Exchange notes that any market participant may subscribe to this data feed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative on filing. The Exchange stated that the proposed rule change promotes the protection of investors and the public interest by improving the organization and clarity of the Exchange's rules. Waiver of the operative delay would allow the Exchange, without delay, to utilize the proposed definitions in other rules and to continue to amend other sections of Rule 1080 for improved readability, therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[11] *See* Securities and Exchange Act Release No. 75 FR 30081 (May 28, 2010) (SR–Phlx–2010–67).

[12] *See* Securities and Exchange Act Release No. 75 FR 30081 (May 28, 2010) (SR–Phlx–2010–67).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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-Phlx-2018–09 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–Phlx–2018–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–09, and should be submitted on or before February 20, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01677 Filed 1–29–18; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82583; File No. SR–FICC–2017–806]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Extension of the Review Period of an Advance Notice To Amend the Loss Allocation Rules and Make Other Changes

January 24, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–FICC–2017–806 (''Advance Notice'') as described in Items I and II below, which Items have been prepared by the clearing agency.[2] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons and to extend the review period of the Advance Notice for an additional 60 days pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[3]

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of proposed 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]

[1] 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively.

[2] On December 18, 2017, FICC filed the Advance Notice as a proposed rule change (SR–FICC–2017–022) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[3] 12 U.S.C. 5465(e)(1)(H).

[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.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. 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 and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments relating to this proposal have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Nature of the Proposed Change

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.

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

[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.

would also retain the types of losses that can be allocated to Tier One Netting 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

[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.*

Rules to address the losses and liabilities that may arise from or relate to multiple Defaulting Member Events and/or Declared Non-Default Loss Events that arise in quick succession in a Division. Specifically, the proposal would group Defaulting Member Events and Declared Non-Default Loss Events occurring 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

[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.

Members or Tier One Members, as applicable, the option to limit their loss allocation exposure at the beginning of 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

[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.

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 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.

[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.

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 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.

Expected Effect on Risks to the Clearing Agency, Its Participants and the Market

FICC believes that the proposed rule changes to enhance the resiliency of each Division's loss allocation process and to delete certain limiting language regarding FICC's use of MBSD Clearing Fund would reduce the risk of uncertainty to FICC, each Division's members and the market overall. Specifically, by modifying the calculation of FICC's corporate

contribution, FICC would apply a mandatory fixed percentage of its General Business Risk Capital Requirement (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.

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.

Management of Identified Risks

FICC is proposing the rule changes as described in detail above in order to enhance the resiliency of each Division's loss allocation process and provide transparency and accessibility to its respective members regarding each Division's loss allocation process.

Consistency With the Clearing Supervision Act

The proposed rule change would be consistent with Section 805(b) of Title VIII of the Clearing Supervision Act.[38] The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[39]

The proposed rule change would enhance the resiliency of each Division's loss allocation process by (1) modifying the calculation and application of FICC's corporate contribution, (2) introducing an Event Period, (3) 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, and (4) implementing a revised ''look-back'' period to calculate a member's loss allocation obligation and its Loss Allocation Cap. Together, these proposed rule changes would (i) create greater certainty for members regarding each Division's obligation towards a loss, (ii) more clearly specify each Division's and its respective members' obligations toward a loss and balance the need to manage the risk of sequential defaults and other potential loss events against members' need for certainty concerning their maximum exposures, and (iii) provide members the opportunity to limit their exposure to FICC by capping their exposure to loss allocation. Reducing the risk of uncertainty to FICC, each Division's members and the market overall would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.

[38] 12 U.S.C. 5464(b).

[39] *Id.*

Therefore, FICC believes that the proposed rule change to enhance the resiliency of each Division's loss allocation process is consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

The proposed rule change is also consistent with Rules 17Ad–22(e)(13) and 17Ad–22(e)(23)(i), promulgated under the Act.[40] 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 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.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received,[43] unless extended as described below. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.[44]

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[45] the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.

Here, as the Commission has not requested any additional information, the date that is 60 days after FICC filed the Advance Notice with the Commission is February 16, 2018. However, the Commission is extending the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act[46] because the Commission finds that the Advance Notice raises complex issues. Specifically, the proposed changes are substantial, detailed, and interrelated to corresponding proposals by The Depository Trust Company (''DTC'') and NSCC.[47] As described by FICC above, its loss allocation process is a key component of its risk management process. The proposed changes would provide a comprehensive revision to such loss allocation process when addressing losses from either a Defaulting Member Event or Declared Non-Default Loss Event. In doing so, FICC would clarify certain elements of, introduce new concepts to, and modify other aspects of its loss allocation waterfall as described above. Furthermore, the proposed changes would align the loss allocation rules across all three DTCC Clearing Agencies, in order to help provide consistent treatment of the rules, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies.

Accordingly, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[48] the Commission is extending the review period of the Advance Notice to April 17, 2018 which is the date by which the Commission shall notify the clearing agency of any objection regarding the Advance Notice, unless the Commission requests further information for consideration of the Advance Notice (SR–FICC–2017–806).[49]

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[50]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/*

[40] 17 CFR 240.17Ad–22(e)(13) and (e)(23)(i).

[41] 17 CFR 240.17Ad–22(e)(13).

[42] 17 CFR 240.17Ad–22(e)(23)(i).

[43] 12 U.S.C. 5465(e)(1)(G).

[44] 12 U.S.C. 5465(e)(1)(F).

[45] 12 U.S.C. 5465(e)(1)(H).

[46] *Id.*

[47] On December 18, 2017, DTC and NSCC submitted advance notices and proposed rule changes to enhance their rules regarding allocation of losses. *See* SR–DTC–2017–804, SR–NSCC–2017–806 and SR–DTC–2017–022, SR–NSCC–2017–018, 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.*

[48] 12 U.S.C. 5465(e)(1)(H).

[49] This extension extends the time periods under Sections 806(e)(1)(E) and (G) of the Clearing Supervision Act. 12 U.S.C. 5465(e)(1)(E) and (G).

[50] *See supra* note 2 (concerning the clearing agency's related proposed rule change).

rules/sro.shtml); or Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2017–806 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–2017–806. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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–2017–806 and should be submitted on or before February 14, 2018.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01692 Filed 1–29–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82578; File No. SR–FINRA–2018–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the New Securities Industry Essentials Examination

January 24, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is filing the content outline and selection specifications for the new Securities Industry Essentials™ (SIE™) examination.[4] FINRA is not proposing any textual changes to the By-Laws, Schedules to the By-Laws or Rules of FINRA.

The SIE content outline is attached.[5] The SIE selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to SEA Rule 24b–2.[6]

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room. [sic]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 15A(g)(3) of the Act[7] authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. In accordance with that provision, FINRA has developed examinations that are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge, consistent with applicable registration requirements under FINRA rules. FINRA periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The SEC recently approved a proposed rule change to restructure the FINRA representative-level qualification examination program.[8] The rule change, which will become effective on October 1, 2018,[9] restructures the examination program into a more efficient format whereby all new representative-level applicants will be required to take a general knowledge examination (the SIE) and a tailored, specialized knowledge examination (a revised representative-level qualification examination) for their particular registered role. Individuals are not required to be associated with a FINRA

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] FINRA also is establishing the SIE question bank. Based on instruction from SEC staff, FINRA is submitting this filing for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, and is not filing the question bank. *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for SEC review.

[5] The Commission notes that the content outline is attached to the filing, not to this Notice.

[6] 17 CFR 240.24b–2.

[7] 15 U.S.C. 78*o*–3(g)(3).

[8] *See* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR–FINRA–2017–007).

[9] *See Regulatory Notice* 17–30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017).

member to be eligible to take the SIE examination. However, passing the SIE examination alone will not qualify an individual for registration with FINRA. To be eligible for registration, an individual must also be associated with a firm, pass an appropriate qualification examination for representative or principal and satisfy the other requirements relating to the registration process.

The restructured program eliminates duplicative testing of general securities knowledge on the current representative-level qualification examinations by moving such content into the SIE examination.[10] The SIE examination will test fundamental securities-related knowledge, including knowledge of basic products, the structure and function of the securities industry, the regulatory agencies and their functions and regulated and prohibited practices, whereas the revised representative-level qualification examinations will test knowledge relevant to day-to-day activities, responsibilities and job functions of representatives.[11]

FINRA developed the SIE examination in consultation with a committee of industry representatives and representatives of several other self-regulatory organizations (''SROs''). Beginning on October 1, 2018, new applicants seeking to register as representatives must pass the SIE examination and a revised representative-level qualification examination, such as the revised General Securities Representative (Series 7) examination, appropriate to their job functions at the firm with which they are associating before their registrations can become effective.[12]

SIE Content Outline

As noted above, FINRA is proposing to move the general securities knowledge currently covered on the representative-level qualification examinations to the SIE examination. For example, FINRA Rule 3220 (Influencing or Rewarding Employees of Others) (the Gifts Rule) will now be tested on the SIE examination, rather than on the representative-level examinations.

The SIE content outline is divided into four sections. The following are the four sections, denoted Section 1 through Section 4, with the associated number of questions:

Section 1: Knowledge of Capital Markets, 12 questions;

Section 2: Understanding Products and Their Risks, 33 questions;

Section 3: Understanding Trading, Customer Accounts and Prohibited Activities, 23 questions; and

Section 4: Overview of the Regulatory Framework, 7 questions.

Each section includes the essential areas of general knowledge. There are four areas (1.1–1.4) associated with Section 1;[13] two areas (2.1–2.2) associated with Section 2;[14] three areas (3.1–3.3) associated with Section 3;[15] and two areas (4.1–4.2) associated with Section 4.[16] For example, one such area of knowledge (subsection 1.3) covers economic factors, such as the Federal Reserve Board's impact on business activity and market stability.[17] Further, subsection 2.1 covers knowledge of the characteristics of the specified securities products, such as voting rights associated with equity securities.[18] In addition, each of the four sections lists the applicable laws, rules and regulations related to the areas of knowledge. These include applicable federal securities laws as well as FINRA rules and rules of other SROs. The SIE selection specifications and question bank cover the topics in the content outline.

The content outline also includes a preface, which provides: (1) An overview of the purpose of the examination; (2) a table of contents and general information regarding the structure of the examination; and (3) general information regarding the administration of the examination, including an explanation that a statistical adjustment process known as equating is used in scoring the examination.[19]

The number of questions on the SIE examination will be 75 scored multiple-choice questions,[20] and candidates will have one hour and 45 minutes to complete the examination. FINRA will publish the passing score for the SIE examination on its website, at *www.finra.org,* prior to its first administration.

Availability of Content Outline

The SIE content outline will be made available on FINRA's website no later than April 1, 2018.

FINRA is filing the proposed rule change for immediate effectiveness. The implementation date will be October 1, 2018, to coincide with the implementation of the restructured representative-level examination program. FINRA will also announce the implementation date of the proposed rule change in a *Regulatory Notice*.

2. Statutory Basis

FINRA believes that the SIE examination is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Act,[22] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. The proposed rule change will improve the efficiency of FINRA's representative-level examination program, without compromising the qualification standards, by moving the general securities knowledge content from the representative-level examinations to the SIE examination. The proposed rule change also establishes a prerequisite qualification examination that associated persons of FINRA members must pass, in addition to passing an appropriate representative-level examination, to register and function as representatives. Finally, the SIE examination is intended to safeguard the investing public by helping to ensure that individuals registering as representatives have the requisite general securities knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The SIE

[10] Each of the current representative-level examinations covers general securities knowledge, with the exception of the Research Analyst (Series 86 and 87) examinations.

[11] In conjunction with this proposed rule change, FINRA also is filing with the Commission the content outlines for the revised representative-level qualification examinations.

[12] FINRA Rule 1220(b) sets forth each representative-level registration category and applicable qualification examination.

[13] *See* Exhibit 3a, Outline Pages 3–5. The outline is attached as Exhibit 3a to the 19b–4 form.

[14] *See* Exhibit 3a, Outline Pages 6–9.

[15] *See* Exhibit 3a, Outline Pages 10–13.

[16] *See* Exhibit 3a, Outline Pages 14–15.

[17] *See* Exhibit 3a, Outline Pages 3–4.

[18] *See* Exhibit 3a, Outline Pages 6–8.

[19] *See* Exhibit 3a, Outline Page 2.

[20] Consistent with FINRA's practice of including ''pretest'' questions on examinations, the SIE examination includes 10 additional, unidentified pretest questions that do not contribute towards the candidate's score. The pretest questions are designed to ensure that new examination questions meet acceptable testing standards prior to use for scoring purposes. Therefore, the SIE examination actually consists of 85 questions, 75 of which are scored. The 10 pretest questions are randomly distributed throughout the examination.

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] 15 U.S.C. 78*o*–3(g)(3).

examination generally covers the same general securities knowledge that is currently covered on the representative-level examinations. FINRA also provided a detailed economic impact assessment regarding the introduction of the SIE examination and the restructuring of the representative-level examinations as part of the proposed rule change to restructure the FINRA representative-level qualification examination program.[23]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2018–002 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–FINRA–2018–002. 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 FINRA. 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–FINRA–2018–002 and should be submitted on or before February 20, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01678 Filed 1–29–18; 8:45 am]

BILLING CODE 8011–01–P

[23] *See* Securities Exchange Act Release No. 80371 (April 4, 2017), 82 FR 17336 (April 10, 2017) (Notice of Filing of File No. SR–FINRA–2017–007).

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82584; File No. SR–NSCC–2017–806]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Extension of the Review Period of an Advance Notice To Amend the Loss Allocation Rules and Make Other Changes

January 24, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–NSCC–2017–806 (''Advance Notice'') as described in Items I and II below, which Items have been prepared by the clearing agency.[2] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons and to extend the review period of the advance notice for an additional 60 days pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[3]

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of proposed 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 Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance

[1] 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively.

[2] On December 18, 2017, NSCC filed the Advance Notice as a proposed rule change (SR–NSCC–2017–018) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[3] 12 U.S.C. 5465(e)(1)(H).

[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.*

Notice. 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 and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments relating to this proposal have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Nature of the Proposed Change

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 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

[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.

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.

(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.

[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.*

[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.

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.

(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

[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.

[16] NSCC's current loss allocation rules pre-date NSCC's move to a risk-based margining methodology.

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 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,

[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.

[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.

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 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.

[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.

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 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

[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.

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 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

[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).

[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.

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 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

[36] *Supra* note 13.

[37] *Supra* note 6.

[38] *Supra* note 7.

[39] *Supra* note 8.

[40] *Supra* note 11.

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 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

[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.

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) 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

[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.

[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

Continued

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.

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

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 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.

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.

Expected Effect on Risks to the Clearing Agency, Its Participants and the Market

NSCC believes that the proposed rule changes to enhance the resiliency of NSCC's loss allocation process and to shorten the time within which NSCC is required to return a former Member's Clearing Fund deposit would reduce the risk of uncertainty to NSCC, its Members and the market overall. Specifically, 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 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.

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.

Management of Identified Risks

NSCC is proposing the rule changes as described in detail above in order to enhance the resiliency of NSCC's loss allocation process and provide transparency and accessibility to Members regarding NSCC's loss allocation process.

Consistency With the Clearing Supervision Act

The proposed rule change would be consistent with Section 805(b) of the Clearing Supervision Act.[52] The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[53]

The proposed rule change would enhance the resiliency of NSCC's loss allocation process by (1) modifying the calculation and application of NSCC's corporate contribution, (2) introducing an Event Period, (3) 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, and (4) implementing 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. Together, these proposed rule changes would (i) create greater certainty for Members regarding NSCC's obligation towards a

[52] 12 U.S.C. 5464(b).

[53] *Id.*

loss, (ii) more clearly specify NSCC's and Members' obligations toward a loss and balance the need to manage the risk of sequential defaults and other potential loss events against Members' need for certainty concerning their maximum exposures, and (iii) provide Members the opportunity to limit their exposure to NSCC by capping their exposure to loss allocation. Reducing the risk of uncertainty to NSCC, its Members and the market overall would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Therefore, NSCC believes that the proposed rule change to enhance the resiliency of NSCC's loss allocation process is consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

The proposed rule change is also consistent with Rules 17Ad–22(e)(13) and 17Ad–22(e)(23)(i), promulgated under the Act.[54] 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.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received,[57] unless extended as described below. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.[58]

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[59] the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.

Here, as the Commission has not requested any additional information, the date that is 60 days after NSCC filed the Advance Notice with the Commission is February 16, 2018. However, the Commission is extending the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act [60] because the Commission finds that the Advance Notice raises complex issues. Specifically, the proposed changes are substantial, detailed, and interrelated to corresponding proposals by DTC and FICC.[61] As described by NSCC above, its loss allocation process is a key component of its risk management process. The proposed changes would provide a comprehensive revision to such loss allocation process when addressing losses from either Defaulting Member Events and Declared Non-Default Loss Events. In doing so, NSCC would clarify certain elements of, introduce new concepts to, and modify other aspects of its loss allocation waterfall as described above. Furthermore, the proposed changes would align the loss allocation rules across all three DTCC Clearing Agencies, in order to help provide consistent treatment of the rules, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies.

Accordingly, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[62] the Commission is extending the review period of the Advance Notice to April 17, 2018 which is the date by which the Commission shall notify the clearing agency of any objection regarding the Advance Notice, unless the Commission requests further information for consideration of the Advance Notice (SR–NSCC–2017–806).[63]

The clearing agency shall post notice on its website of proposed changes that are implemented.

[54] 17 CFR 240.17Ad–22(e)(13) and (e)(23)(i).

[55] 17 CFR 240.17Ad–22(e)(13).

[56] 17 CFR 240.17Ad–22(e)(23)(i).

[57] 12 U.S.C. 5465(e)(1)(G).

[58] 12 U.S.C. 5465(e)(1)(F).

[59] 12 U.S.C. 5465(e)(1)(H).

[60] *Id.*

[61] On December 18, 2017, DTC and FICC submitted advance notices and proposed rule changes to enhance their rules regarding allocation of losses. *See* SR–DTC–2017–804, SR–FICC–2017–806 and SR–DTC–2017–022, SR–FICC–2017–022, 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.*

[62] 12 U.S.C. 5465(e)(1)(H).

[63] This extension extends the time periods under Sections 806(e)(1)(E) and (G) of the Clearing Supervision Act. 12 U.S.C. 5465(e)(1)(E) and (G).

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[64]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–2017–806 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–2017–806. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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–2017–806 and should be submitted on or before February 14, 2018.

[64] *See supra* note 2 (concerning the clearing agency's related proposed rule changes).

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01693 Filed 1–29–18; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 03/03–5191 issued to Gladstone Financial Corporation, said license is hereby declared null and void.

United States Small Business Administration.

Dated: January 5, 2018.

A. Joseph Shepard,

Associate Administrator for Investment and Innovation.

[FR Doc. 2018–01754 Filed 1–29–18; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0640 issued to Fifth Street Mezzanine Partners IV, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Dated: December 29, 2017.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2018–01757 Filed 1–29–18; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 05/05–0290 issued to Granite Creek FlexCap I, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Dated: December 29, 2017.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2018–01758 Filed 1–29–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0637 issued to Contemporary Healthcare Fund I, LP, said license is hereby declared null and void.

United States Small Business Administration.

Dated: January 8, 2018.

A. Joseph Shepard,

Associate Administrator for Investment and Innovation.

[FR Doc. 2018–01759 Filed 1–29–18; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small

Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0657 issued to Fifth Street Mezzanine Partners V, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Dated: December 29, 2017.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2018–01782 Filed 1–29–18; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 06/06–0335 issued to Escalate Capital Partners SBIC I, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Dated: January 4, 2018.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2018–01749 Filed 1–29–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 10263]

60-Day Notice of Proposed Information Collection: Foreign Service Officer Test Registration Form

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to April 2, 2018.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2018–0004'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: FSOTQuestions@state.gov*.
- *Regular Mail:* Send written comments to: Board of Examiners for the Foreign Service, FSOT Registration Form Comments Department of State SA–1, H–518. 2401 E Street NW, Washington, DC 20522.
- *Fax:* (202) 736–9190, Attn: FSOT Registration Form Comments

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Board of Examiners for the Foreign Service, Department of State SA–1, H–518. 2401 E Street NW, Washington, DC 20522.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Registration for the Foreign Service Officer Test.
- *OMB Control Number:* 1405–0008.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Human Resources, Board of Examiners.
- *Form Number:* DS–1998E.
- *Respondents:* Registrants for the Foreign Service Officer Test.
- *Estimated Number of Respondents:* 12,000.
- *Estimated Number of Responses:* 12,000.
- *Average Time per Response:* 2 hours.
- *Total Estimated Burden Time:* 24,000 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Individuals registering for the Foreign Service Officer Test will complete a Registration Form, asking for their name, age, Social Security Number, contact information, ethnicity, education and work history, and military experience. The information will be used to prepare and issue admission to the Foreign Service Officer Test, to provide data useful for improving future tests, and to conduct research studies based on the test results.

Methodology

The registration process, which includes concurrent application submission and seat selection, opens approximately four (4) weeks prior to each testing window. To register, individuals go to *pearsonvue.com/fsot/* during the four-week period prior to a specific testing window to create an account, submit completed eligibility verification and application forms, and select a location and seat for the specific test date.

Kristi Hogan,

Staff Director, HR/REE/BEX, Department of State.

[FR Doc. 2018–01666 Filed 1–29–18; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Small Unmanned Aircraft Registration System (sUAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 3, 2017. Aircraft registration is necessary to ensure personal accountability among all users of the national airspace system. Aircraft registration also allows the FAA and law enforcement agencies to address non-compliance by providing the means by which to identify an aircraft's owner and operator. This collection also permits individuals to amend their record in the registration database.

DATES: Written comments should be submitted by March 1, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Claire Barrett by email at: *pra@dot.gov;* 202–366–8135; Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0765.

Title: Small Unmanned Aircraft Registration System (sUAS).

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The Secretary of the Department of Transportation (DOT) and the Administrator of the Federal Aviation Administration (FAA) affirmed that all unmanned aircraft are aircraft. As such, in accordance with 49 U.S.C. 44101(a) and as further prescribed in 14 CFR part 47, registration is required prior to operation. *See* 80 FR 63912, 63913 (October 22, 2015). Aircraft registration is necessary to ensure personal accountability among all users of the national airspace system. Aircraft registration also allows the FAA and law enforcement agencies to address non-compliance by providing the means by which to identify an aircraft's owner and operator.

Registration is required for all aircraft, including small unmanned aircraft weighing more than 0.55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft and operated outdoors in the national airspace system. *See* 49 U.S.C. 44101–44103; 14 CFR 48. Upon registration, the Administrator must issue a certificate of registration to the aircraft owner. *See* 49 U.S.C. 44103.

Registration, however, does not provide the authority to operate. Persons intending to operate a small unmanned aircraft exclusively as model aircraft must operate in compliance with section 336 of Public Law 112–95. Persons intending to operate their small unmanned aircraft not exclusively in compliance with section 336 must operate in accordance with part 107 or part 91, in accordance with a waiver issued under part 107, in accordance with an exemption issued under 14 CFR part 11 (including those persons operating under an exemption issued pursuant to section 333 of Public Law 112–95), or in conjunction with the issuance of a special airworthiness certificate.

As a result of the May 19, 2017 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Taylor* v. *Huerta*), the Small UAS Registration and Marking interim final rule was vacated to the extent it applied to model aircraft until Congress restored registration for model aircraft in the National Defense Authorization Act of 2018 (P.L. 115–91). Consequently, the FAA has discontinued its process for registration deletion and refund for owners operating in compliance with section 336. All owners of small unmanned aircraft weighing more than .55 pounds must register prior to operating outdoors in the national airspace system.

Respondents: Approximately 1.9 million registrants annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 4.25 minutes per response.

Estimated Total Annual Burden: About 141,158 hours.

Issued in Washington, DC on January 24, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–01800 Filed 1–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Cable Union Airport, Cable, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change parcel 41 (15.144 acres) and parcel 45 (1.704 acres) of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at Cable Union Airport, Cable, WI. The aforementioned land is not needed for aeronautical use.

The Cable Union Airport is owned by the Towns of Cable, Drummond and Namakagon, WI, and operated by the Cable Union Airport Commission. The airport is located off Telemark Road approximately 2.5 miles east of the Town of Cable. The parcels of airport property that this notice is addressing are described as parcel 41 and 45. The parcels are located near the west end of turf runway 8/26 at the Airport.

Parcels 41 and 45 are not serving aeronautical purposes for the airport. Pending the release from aeronautical obligations of parcels 41 and 45 the sponsor anticipates disposing of the land and using the proceeds for aeronautical purposes.

DATES: Comments must be received on or before March 1, 2018.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Robert Lee, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018, Telephone: (847)294–7526/Fax: (847)294–7046.

Written comments on the Sponsor's request must be delivered or mailed to: Robert Lee, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018,

Telephone Number: (847)294–7526/ FAX Number: (847)294–7046.

FOR FURTHER INFORMATION CONTACT: Robert Lee, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number: (847)294–7526/ FAX Number: (847)294–7046.

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.

Parcel 41 is currently in use as a shooting range, operated by the Cable Rod and Gun Club. Parcel 45 is currently in use as McNaught Road, maintained by the Town of Cable. Parcel 41 and 45 were acquired as airport Parcel 15 by the Sponsors on March 18, 1971, as recorded in Volume 235, Page 285 of the official records of the Bayfield County, Wisconsin Register of Deeds.

The Sponsors proposed plan is to convey Parcel 41, currently not in use or needed for aeronautical purposes, to the Cable Rod and Gun Club for continued use as a shooting range. The plan for Parcel 45, currently not in use or needed for aeronautical purposes, is to convey it to the Town of Cable for continued use as a public roadway.

Prior to disposal there will be avigation easements established over Parcel 41 and 45. These easements will lie under the existing Part 77 surfaces for Runway 8, and will preserve the right of free and unobstructed flight for aircraft maneuvering about the Airport. It will restrict objects from penetrating into the Part 77 surface.

A full narrative appraisal for Parcel 41 has been established and has provided evidence the sponsor will be obtaining fair market value for this parcel. Parcel 45 was not appraised since its current use is roadway and is considered substandard for appraisal purposes. The sponsor considers the value of this parcel to be offset by the Town of Cables 50 plus years of maintenance and improvements at no cost to the airport.

The disposition of proceeds from the sale 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 Cable Union Airport, Cable, WI from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Parcel 41

A part of the Southeast ¼ of the Northeast ¼ of Section 20, Township 43 North, Range 7 West, Town of Cable, Bayfield County, Wisconsin, described as follows:

Commencing at the East ¼ corner of said Section 20; Thence North 85°50′13″ West along the monumented South line of said Northeast ¼, 1317.25 feet to the monumented West line of said Southeast ¼ of the Northeast ¼; Thence North 0°08′21″ West along said monumented West Line, 224.91 feet to the monumented North line of the south 225 feet of said Southeast ¼ of the Northeast ¼; Thence South 85°50′26″ East along said monumented North line, 66.19 feet to the point of beginning; Thence North 0°08′21″ West, 1124.70 feet to the monumented North line of said Southeast ¼ of the Northeast ¼; Thence South 85°42′07″ East along said monumented North line of the Southeast ¼ of Northeast ¼, 728.00 feet; Thence South 0°00′58″ East, 616.02 feet; Thence South 83°57′40″ West, 326.35 feet; Thence South 0°08′21″ East, 448.87 feet to said North line of the South 225 feet of the Southeast ¼ of the Northeast ¼; Thence North 85°50′26″ West along said North line, 401.00 feet to the point of beginning.

Parcel 45

A part of the Southeast ¼ of the Northeast ¼ of Section 20, Township 43 North, Range 7 West, Town of Cable, Bayfield County, Wisconsin, described as follows:

Commencing at the East ¼ corner of said Section 20; Thence North 85°50′13″ West along the monumented South line of the Southeast ¼ of the Northeast ¼, 1317.25 feet to the monumented West line of said southeast ¼ of the Northeast ¼; Thence North 0°08′21″ West along said monumented West line, 224.91 feet to the monumented North line of the south 225 feet of the Southeast ¼ of the Northeast ¼ and the point of beginning; Thence continuing North 0°08′21″ West along the East line of Certified Survey Map No. 1095, recorded in the Bayfield County Register of Deeds, Bayfield County, Wisconsin, 1124.86 feet to the monumented North line of the Southeast ¼ of the Northeast ¼ of said Section 20; Thence South 85°42′07″ East along said monumented North line of the southeast ¼ of the Northeast ¼, 66.20 feet; Thence South 0°08′21″ East, 1124.70 feet to said monumented North line of the South 225 feet of the Southeast ¼ of the Northeast ¼; Thence North 85°50′26″ West along said monumented North line of the South 225 feet of the Southeast ¼ of the Northeast ¼, 66.19 feet to the point of beginning.

Issued in Des Plaines, IL, on January 11, 2018.

Deb Bartell,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2018–01675 Filed 1–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. The information collected is used by the FAA to register aircraft or hold an aircraft in trust. The information required to register and prove ownership of an aircraft is required from any person wishing to register an aircraft.

DATES: Written comments should be submitted by April 2, 2018.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Barbara L Hall by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to

enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0042.

Title: Aircraft Registration.

Form Numbers:

Type of Review: Renewal of an information collection.

Background: Public Law 103–272 states that all aircraft must be registered before they may be flown. It sets forth registration eligibility requirements and provides for application for registration as well as suspension and/or revocation of registration. The information collected is used by the FAA to register an aircraft or hold an aircraft in trust. The information requested is required to register and prove ownership.

Respondents: Approximately 146,757 registrants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 32 minutes.

Estimated Total Annual Burden: 103,982 hours.

Issued in Fort Worth, TX on January 24, 2018.

Barbara L. Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–01797 Filed 1–29–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2001–9486]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on December 20, 2017, the Canadian National Railway Company (CN) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 231. FRA assigned the petition Docket Number FRA–2001–9486.

Specifically, CN seeks an extension of an existing waiver granting relief from 49 CFR 231.6(a)(3)(ii); 231.1(d)(3)(i); 231.6(c)(3)(i); and 231.6(d)(3)(i), as they pertain to the use of two 100-ton, seven-unit articulated ramp cars numbered CN689200 and CN689201. CN has operated the ramp cars in accordance to with the terms of the waiver, as modified in 2007. No physical modifications have been made to the cars that would require any further waiver of FRA's existing freight car regulations. Additionally, no incidents of injury to any person, or damage to any property, have been noted by CN with respect to the use of the ramp cars. A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 16, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–01760 Filed 1–29–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0002]

Petition for Waiver of Compliance

Under part 211 of Title 49 of the Code of Federal Regulations (CFR), this provides the public notice that on December 10, 2017, the Railroading Heritage of Midwest America Inc. (RHMA) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 230, *Steam Locomotive Inspection and Maintenance Standards.* FRA assigned the petition Docket Number FRA–2018–0002.

RHMA maintains and operates the former Chicago, Milwaukee, St. Paul & Pacific Railroad (Milwaukee Road) 4–8–4 steam locomotive No. 261. Built in 1944 by the American Locomotive Company for the Milwaukee Road, No. 261 is used for educational tours operating in the midwest. RHMA is seeking relief from section 230.41(a), *General,* with respect to the 5-year inspection interval for flexible staybolts with caps. Specifically, RHMA is requesting permission to perform the 5-year flexible staybolt inspection at the 7-year, 6-month interval. RHMA feels that extending the 5-year inspection for removing the caps would not increase the safety risk to the boiler and the additional cost is not justified based on the low amount of annual service days.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or

comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 16, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–01761 Filed 1–29–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Meeting Notice—U.S. Maritime Transportation System National Advisory Committee

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of advisory committee public meeting.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to discuss advice and recommendations for the U.S. Department of Transportation on issues related to the maritime transportation system.

DATES: The meeting will be held on Tuesday, February 27, 2018 from 9:00 a.m. to 5:00 p.m. and Wednesday, February 28, 2018 from 9:00 a.m. to 3:00 p.m. Eastern Savings Time (EST).

ADDRESSES: The meetings will be held at the DOT Conference Center at the U.S. Department of Transportation Headquarters, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeffrey Flumignan, Designated Federal Officer, at *MTSNAC@dot.gov* or at (212) 668–2064. Please visit the MTSNAC website at *http://www.marad.dot.gov/ports/marine-transportation-system-mts/marine-transportation-system-national-advisory-committee-mtsnac/.*

SUPPLEMENTARY INFORMATION: The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of Transportation and the Maritime Administrator on issues related to the maritime transportation system. The MTSNAC was originally established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007. The MTSNAC operates in accordance with the provisions of the Federal Advisory Committee Act (FACA).

Agenda

The agenda will include: (1) Welcome, opening remarks, and introductions; (2) brief remarks by the Maritime Administrator; (3) updates to the Committee on subcommittee work; (4) development of work plans and proposed recommendations; (5) administrative items; and (6) public comments.

Public Participation

The meeting will be open to the public. Members of the public who wish to attend in person must RSVP to *MTSNAC@dot.gov* with your name and affiliation no later than 5:00 p.m. EST on February 12, 2018, in order to facilitate entry. Seating will be limited and available on a first-come-first-serve basis.

Services for Individuals with Disabilities: The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids are asked to notify Jeffrey Flumignan at (212) 668–2064 or *MTSNAC@dot.gov* five (5) business days before the meeting.

Public Comments: A public comment period will commence at approximately 4:00 p.m. on February 27, 2018 and 11:45 a.m. on February 28, 2018. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact the Designated Federal Officer via email: *MTSNAC@dot.gov.* Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting or preferably emailed to *MTSNAC@dot.gov* . Additional written comments are welcome and must be filed as indicated below.

Written comments: Persons who wish to submit written comments for consideration by the Committee must email *MTSNAC@dot.gov,* or send them to MTSNAC Designated Federal Officers via email: *MTSNAC@dot.gov,* Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE, W21–307, Washington, DC 20590 no later than February 12, 2018 to provide sufficient time for review.

(Authority: 49 CFR part 1.93(a); 5 U.S.C. 552b; 41 CFR parts 102–3; 5 U.S.C. app. Sections 1–16)

* * * * *

By Order of the Maritime Administrator.

Dated: January 25, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–01744 Filed 1–29–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Jaguar Land Rover North America LLC

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Jaguar Land Rover North America LLC's, (Jaguar Land Rover) petition for exemption of the Range Rover Velar vehicle line in accordance with *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard).

DATES: The exemption granted by this notice is effective beginning with 2019 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is 202–366–5222. Her fax number is 202–493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated September 29, 2017, Jaguar Land Rover requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the MY 2019 Range Rover Velar vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Jaguar Land Rover provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Velar vehicle line. Jaguar Land Rover stated that its Range Rover Velar vehicle line will be equipped with a passive, transponder-based, electronic engine immobilizer device as standard equipment beginning with the 2019 model year. Key components of its antitheft device will include a power train control module (PCM), instrument cluster, body control module (BCM), remote frequency receiver (RFR), Immobilizer Antenna Unit (IAU), Remote Frequency Actuator (RFA), Security Horn and Vehicle Horn, Smart Key, Door Zone Modules (Passenger and Driver) (DMZs) and a Security Warning LED. Jaguar Land Rover stated that its antitheft device will also include a vehicle security system that includes an audible and visual perimeter alarm system as standard equipment on the entire vehicle line. Jaguar Land Rover further stated that its perimeter alarm system can be armed with its Smart Key or programmed to be passively armed. The horn will sound and the vehicle's exterior lights will flash if unauthorized entry is attempted by opening the hood, doors or luggage compartment.

Jaguar Land Rover's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of 543.6, Jaguar Land Rover provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Jaguar Land Rover conducted tests based on its own specified standards. Jaguar Land Rover provided a detailed list of the tests conducted (*i.e.,* temperature and humidity cycling, high and low temperature cycling, mechanical shock, random vibration, thermal stress/shock tests, material resistance tests, dry heat, dust and fluid ingress tests). Jaguar Land Rover stated that its device is reliable and durable because it complied with specified requirements for each test. Additionally, Jaguar Land Rover stated that its key recognition sequence includes over a billion code combinations with encrypted data that are secure against duplication. Jaguar Land Rover further stated that the coded data transfer between modules use a unique secure identifier, and a secure public algorithm. Jaguar Land Rover also stated that since its Velar vehicle line will utilize a push button vehicle ignition, it does not have a conventional mechanical key barrel, and therefore, a thief will have no means of forcibly bypassing the key-locking system.

Jaguar Land Rover stated that its immobilizer device is automatically activated when the Smart Key is removed from the vehicle. Jaguar Land Rover also stated that its Smart key is programmed and synchronized to each vehicle through an identification key code and a secret, randomly-generated code unique to each vehicle.

Jaguar Land Rover stated that there are three methods of antitheft device deactivation and engine starting. Method one consists of automatic detection of the Smart Key via a remote frequency challenge response sequence. Specifically, when the driver approaches the vehicle and pulls the driver's door handle following authentication of the correct Smart Key, the doors will unlock. When the ignition start button is pressed, the device searches to find and authenticate the Smart Key within the vehicle interior. If successful, this information is passed to the BCM via the Remote Function Actuator by coded data transfer. The BCM, will pass the ''valid key'' status to the instrument cluster, via a coded data transfer and then send the key valid message code to the PCM initiating a coded data transfer and engine authorization to start. Method two consists of unlocking the vehicle with the Smart Key unlock button. As the driver approaches the vehicle, the Smart Key unlock button is pressed and the doors will unlock. Once the driver presses the ignition start button, the operation process is the same as method one. Method three involves using the emergency key blade. If the Smart Key has a discharged battery or is damaged, there is an emergency key blade that can be removed from the Smart Key and used to unlock the doors. When the ignition start button is pressed, the device searches to find and authenticate the Smart Key within the vehicle interior. If successful, the Smart Key needs to be docked. Once the Smart Key is docked/placed in the correct position, and the ignition start button is pressed again, the BCM and Smart key enter a coded data exchange via the Immobilizer Antenna Unit. The BCM then passes the valid key status to the instrument cluster, via the Immobilizer Antenna Unit and sends the key valid message to the PCM which initiates a coded data transfer. If successful, the engine starting is authorized.

Jaguar Land Rover stated that its immobilizer is substantially similar to the antitheft device installed on the Jaguar F-Pace, Jaguar XJ, Jaguar F-Type, Jaguar XF, Jaguar XE, Land Rover Discovery Sport and the Land Rover Range Rover Evoque. Jaguar Land Rover stated that based on MY 2014 theft information published by NHTSA, the Jaguar Land Rover vehicles equipped with immobilizers and perimeter alarm systems had a combined theft rate of 0.31 per thousand vehicles, which is below NHTSA's overall theft rate of 1.15 thefts per thousand. The agency notes

the average theft rate for the Jaguar XJ, XF, F-Type and the Land Rover Range Rover Evoque vehicle lines using an average of three model years' data (2012–2014) are 0.6791, 0.6277, 0.7402 and 0.5418, respectively. Jaguar Land Rover stated the low theft rates demonstrate the effectiveness of the immobilizer device.

Based on the supporting evidence submitted by Jaguar Land Rover on the device, the agency has determined that the antitheft device for the Range Rover Velar vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Jaguar Land Rover has provided adequate reasons for its belief that the antitheft device for the Range Rover Velar vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Jaguar Land Rover provided about its device.

For the foregoing reasons, the agency hereby grants in full Jaguar Land Rover's petition for exemption for the Range Rover Velar vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Jaguar Land Rover decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Jaguar Land Rover wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency seeks to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2018–01687 Filed 1–29–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3491

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Consumer Cooperative Exemption Application.

DATES: Written comments should be received on or before April 2, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Martha R. Brinson, at (202) 317–5753 or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consumer Cooperative Exemption Application.

OMB Number: 1545–1941.

Form Number: 3491.

Abstract: A cooperative uses Form 3491 to apply for exemption from filing information returns (Forms 1099–PATR) on patronage distributions of $10 or more to any person during the calendar year.

Current Actions: There are no changes being made to Form 3491 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, Individuals or households, and Farms.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 44 minutes.

Estimated Total Annual Burden Hours: 148.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of 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.

Approved: January 16, 2018.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–01659 Filed 1–29–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its 11th meeting on Thursday, Feb. 15, 2018, in the Cash Room, Main Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220, beginning at 9:30 a.m. EST. The meeting will be open to the public and limited seating will be available.

DATES: The meeting will be held on Thursday, Feb. 15, 2018, beginning at 9:30 a.m. EST.

ADDRESSES: The meeting will be held in the Cash Room, Main Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220. The meeting will be open to the public. A limited number of seats will be available for those interested in attending the meeting, and those seats would be on a first-come, first-served basis. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting MUST contact the OFR by email at *OFR_FRAC@ofr.treasury.gov* by 5 p.m. EST on Thursday, Feb. 8, 2018, to inform the OFR of their desire to attend the meeting and receive further instructions about building clearance.

FOR FURTHER INFORMATION CONTACT: Melissa Avstreih, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 927–8032 (this is not a toll-free number), or *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at *OFR_FRAC@ofr.treasury.gov.*
- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Melissa Avstreih, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The OFR will post statements on the committee's website, *http://www.financialresearch.gov,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. EST. You may make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: The committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of Financial Stability Oversight Council.

This is the 11th meeting of the Financial Research Advisory Committee. Topics to be discussed include the committee's views on particular aspects of the United States Department of the Treasury responses to Executive Order 13772 on ''Core Principles for Regulating the United States Financial System.'' For more information on the OFR and the committee, please visit the OFR website at *http://www.financialresearch.gov.*

Dated: January 24, 2018.

Barbara Shycoff,

Chief of External Affairs.

[FR Doc. 2018–01734 Filed 1–29–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2018 Breast Cancer Awareness Commemorative Coin Program

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for the 2018 Breast Cancer Awareness Commemorative Coin Program as follows:

Coin	Introductory price	Regular price
Silver Proof	$51.95	$56.95
Silver Uncirculated	48.95	53.95
Clad Proof	27.95	32.95
Clad Uncirculated	25.95	30.95

Products containing gold coins will be priced according to the Pricing of Numismatic and Commemorative Gold and Platinum Products Grid posted at *www.usmint.gov.*

FOR FURTHER INFORMATION CONTACT: Rosa Matos, Program Manager for Numismatic and Bullion; United States

Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–7500.

Authority: Public Law 114–148.

Dated: January 24, 2018.

David Motl,

Acting Deputy Director, United States Mint.

[FR Doc. 2018–01665 Filed 1–29–18; 8:45 am]

BILLING CODE P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 15, 2018 on ''China's Military Reforms and Modernization: Implications for the United States.''

DATES: The hearing is scheduled for Thursday, February 15, 2018 from 9:00 a.m. to 3:20 p.m.

ADDRESSES: TBD, Washington, DC. A detailed agenda for the hearing will be posted on the Commission's website at *www.uscc.gov.* Also, please check the Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Leslie Tisdale, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *ltisdale@uscc.gov. Reservations are not required to attend the hearing.*

SUPPLEMENTARY INFORMATION: *Background:* This is the second public hearing the Commission will hold during its 2018 report cycle. This hearing will provide insight into how China's ongoing military reform efforts are shaping the People's Liberation Army's long-term defense planning, weapons development, and acquisition programs. The hearing will specifically look at the political and security drivers shaping China's military modernization efforts, how the new Central Military Commission structure coordinates modernization priorities with the military services, examine the development of forces capable of conducting joint operations, and identify implications for the United States. The hearing will be co-chaired by Vice Chairman Carolyn Bartholomew and Senator James Talent. Any interested party may file a written statement by February 15, 2018, by mailing to the contact above. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: January 24, 2018.

Kathleen Wilson,

Finance and Operations Director, U.S.-China Economic and Security, Review Commission.

[FR Doc. 2018–01674 Filed 1–29–18; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0734]

Agency Information Collection Activity: Report of General Information, Report of First Notice of Death, Report of Nursing Home or Assisted Living Information, Report of Defense Finance and Accounting Service (DFAS), Report of Non-Receipt of Payment, Report of Incarceration, Report of Month of Death

AGENCY: Veterans Benefits Administration (VBA), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 2, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0734'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 CFR 3.217.

Title: VA Form 27–0820, Report of General Information, VA Form 27–0820a, Report of Death of First Notice of Death, VA Form 27–0820b, Report of Nursing Home and Assisted Living Information, VA Form 27–0820c, Report of Defense Finance and Accounting Service (DFAS), VA Form 27–0820d, Report of Non-Receipt of Payment, VA Form 27–0820e, Report of Incarceration, VA Form 27–0820f, Report of Month of Death.

OMB Control Number: 2900–0734.

Type of Review: Extension of a currently approved collection.

Abstract: The forms will be used by VA personnel to document verbal information obtained telephonically from claimants or their beneficiary. The data collected will be used as part of the evidence needed to determine the claimant's or beneficiary's eligibility for benefits.

Affected Public: Individuals.

Estimated Annual Burden: 35,501 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,550,000

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–01701 Filed 1–29–18; 8:45 am]

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Part II

Department of Justice

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Placement of MAB–CHMINACA Into Schedule I; Proposed Rule and Temporary rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–421]

Schedules of Controlled Substances: Placement of MAB–CHMINACA Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (other names: MAB–CHMINACA; ADB–CHMINACA), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule I of the Controlled Substances Act. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle MAB–CHMINACA.

DATES: Comments must be submitted electronically or postmarked on or before March 1, 2018.

Interested persons may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before March 1, 2018.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference ''Docket No. DEA–421'' on all electronic and written correspondence, including any attachments.

• *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

• *Paper comments:* Paper comments that duplicate the electronic submission are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

• *Hearing requests:* All requests for a hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing, or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Such requests or notices must conform to the requirements of 21 CFR 1308.44(a) or (b), and 1316.47 or 1316.48, as applicable, and include a statement of the person's interests in the proposed scheduling action, whether the person is adversely affected or aggrieved, and the objections or issues, if any, concerning which the person desires to be heard at a hearing. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and may include a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of a hearing held in relation to this rulemaking is restricted to: ''(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings

prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *.'' All requests for hearing and waivers participation must be sent to the DEA using the address information provided above.

Legal Authority

The Controlled Substances Act (CSA) provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS);[1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This proposed action is supported by a recommendation from the Assistant Secretary for Health of the HHS (Assistant Secretary) and an evaluation of all other relevant data by the DEA. If finalized, this action would continue[2] to impose the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles or proposes to handle MAB–CHMINACA.

Background

On February 5, 2016, the DEA published an order in the **Federal Register** amending 21 CFR 1308.11(h) to temporarily place *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (other names: MAB–CHMINACA; ADB–CHMINACA) in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 81 FR 6171. That temporary scheduling order was effective on the date of publication, and was based on findings by the Acting Administrator of the DEA (Acting Administrator) that the temporary scheduling of this synthetic cannabinoid was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA, 21 U.S.C. 811(h)(2), requires that the temporary control of this substance expire two years from the effective date of the scheduling order, which was February 5, 2016. However, the CSA also provides that during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, the temporary scheduling of that substance could be extended for up to one year. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of HHS,[3] or on the petition of any interested party. An extension of the existing temporary order is being ordered by the Acting Administrator in a separate action, and is published elsewhere in this issue of the **Federal Register**.

The Acting Administrator, on his own motion pursuant to 21 U.S.C. 811(a), is initiating proceedings under 21 U.S.C. 811(a)(1) to permanently schedule MAB–CHMINACA. The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for this synthetic cannabinoid. On May 18, 2016, the Acting Administrator submitted a request to the Assistant Secretary to provide the DEA with a scientific and medical evaluation of available information and a scheduling recommendation for MAB–CHMINACA, in accordance with 21 U.S.C. 811(b) and (c). Upon evaluating the scientific and medical evidence, on January 19, 2018, the Assistant Secretary submitted to the Acting Administrator HHS's scientific and medical evaluations for this substance. Upon receipt of the scientific and medical evaluation and scheduling recommendation from the HHS, the DEA reviewed the documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of MAB–CHMINACA in accordance with 21 U.S.C. 811(c).

Proposed Determination to Schedule MAB–CHMINACA

As discussed in the background section, the Acting Administrator is initiating proceedings, pursuant to 21 U.S.C. 811(a)(1), to add MAB–CHMINACA permanently to schedule I. The DEA has reviewed the scientific and medical evaluations and scheduling recommendation, received from HHS, and all other relevant data and conducted its own eight-factor analysis of the abuse potential of MAB–CHMINACA pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by the HHS and the DEA, and as considered by the DEA in its proposed scheduling action. Please note that both the DEA 8-Factor and HHS 8-Factor analyses and the Assistant Secretary's January 19, 2018, letter, are available in their entirety under the tab ''Supporting Documents'' of the public docket of this action at *http://www.regulations.gov,* under Docket Number ''DEA–421.''

1. *The Drug's Actual or Relative Potential for Abuse:* The term ''abuse'' is not defined in the CSA. However, the legislative history of the CSA suggests that the DEA consider the following criteria in determining whether a particular drug or substance has a potential for abuse:[4]

(a) *There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or*

(b) *There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or*

(c) *Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or*

(d) *The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.*

Review of scientific and medical literature indicates that the ingestion of synthetic cannabinoids (SCs) leads to adverse health effects. Specifically, adverse effects following ingestion of MAB–CHMINACA have included: Tachycardia, aggressive or violent behavior, confusion, depressed mental status, severe agitation, psychosis, and death.

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[2] MAB–CHMINACA is currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(b). 81 FR 8171, Feb. 5, 2016.

[3] Because the Secretary of HHS has delegated to the Assistant Secretary the authority to make domestic drug scheduling recommendations, for purposes of this proposed rulemaking, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

[4] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); reprinted in 1970 U.S.C.C.A.N. 4566, 4603.

The American Association of Poison Control Centers (AAPCC) reported 7,779 exposures to SCs from January 1 to December 31, 2015. The significance of this value is based upon reporting of human exposures to SCs since 2011. While 2012–2014 saw a reduction in exposure calls to AAPCC, 2015 records demonstrate resurgence in calls to poison centers regarding SCs. In addition, the largest monthly tally of calls to poison centers ever recorded by AAPCC in reference to SCs occurred in April 2015, with 1,512 calls. Overdose data demonstrated that the largest outbreak from synthetic cannabinoids occurred from March–May, 2015, with MAB–CHMINACA as the primary substance confirmed by forensic toxicological analysis.

In a letter to DEA dated June 3, 2015, the HHS stated that there are no approved new drug applications or investigational new drug applications for MAB–CHMINACA. According to HHS's January 19, 2018, letter, MAB–CHMINACA is not approved for medical use in treatment in the United States and is not formulated or available for clinical use. Therefore the human use of this substance is likely to be on an individual's own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer drugs. Further, AAPCC reports, published scientific and medical literature, and law enforcement reports indicate that individuals are taking MAB–CHMINACA on their own initiative, rather than on the medical advice of a licensed practitioner.

As noted by the HHS, MAB–CHMINACA, similar to schedule I SCs, displays high affinity binding and potent agonist functional activity at the cannabinoid (CB1) receptor, while drug discrimination studies have demonstrated the ability of this substance to substitute for THC (see factor 2).

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* MAB–CHMINACA is a synthetic cannabinoid that has pharmacological effects similar to the schedule I hallucinogen delta-9-tetrahydrocannabinol (Δ9–THC) and other temporarily and permanently controlled schedule I SCs. In vitro receptor binding and functional assays were conducted with MAB–CHMINACA. In addition, drug discrimination assays using Sprague Dawley rats to identify drugs with THC-like similar subjective effects demonstrated that MAB–CHMINACA fully substituted for the discriminative stimulus effects of THC.

Based on results from the receptor binding (Ki), CB1 functional assay, and drug discrimination studies, the HHS concluded that MAB–CHMINACA acts as a full psychoactive cannabinoid agonist with no antagonist activity, and that MAB–CHMINACA is more potent than THC (schedule I), and is similar in activity to JWH–018, AM2201, ADB–PINACA, AB–FUBINACA, and AB–CHMINACA (schedule I). As stated by the HHS, these data indicate that MAB–CHMINACA is more potent than the schedule I cannabinoid THC in producing behavioral pharmacological effects and shares pharmacological effects with other SCs in schedule I, such as JWH–018.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:*

MAB–CHMINACA shares structural features with a number of schedule I SCs such as AKB48, AB–FUBINACA, ADB–PINACA, and AB–CHMINACA. AKB48, AB–FUBINACA, ADB–PINACA, AB–CHMINACA, and MAB–CHMINACA have the same indazole core structure with substitutions at the 1- and 3-positions of the indazole ring. All five substances are substituted at the 3-position with an amide. MAB–CHMINACA was first reported in the scientific literature in a Pfizer patent (WO/2009/106980) and identified as compound 13. A study conducted by the Department of Veterans Affairs Medical Center (Portland, OR) under the interagency agreement with the DEA indicated that MAB–CHMINACA binds to the CB1 receptor and acts as an agonist at this receptor, similar to results reported in the original Pfizer patent for compound 13 (WO/2009/106980).

The DEA is not aware of any currently accepted medical use in treatment in the United States for MAB–CHMINACA. The Administrator of the DEA sent a letter dated May 14, 2015, to the Assistant Secretary for Health for HHS notifying HHS of DEA's intent to temporarily place MAB–CHMINACA in schedule I and solicited comments, including whether there was an exemption or approval in effect for the substance under the Federal Food, Drug and Cosmetic Act. The Assistant Secretary of Health for the HHS advised the DEA that there are no approved new drug applications or investigational new drug applications for MAB–CHMINACA under section 505 (21 U.S.C. 355) of the Federal Food, Drug, and Cosmetic Act. HHS has no objection regarding the temporary placement of MAB–CHMINACA in schedule 1 of the CSA. In their scheduling recommendation, HHS stated that MAB–CHMINACA is not approved for medical use, is not formulated or available for clinical use, and that all human self-administration is assumed to be on an individual's own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer drugs.

4. *Its History and Current Pattern of Abuse:* As noted by the HHS, SCs have been developed over the last 30 years as tools for investigating the cannabinoid system. The first encounter of SC's within the United States occurred in November 2008 by the United States Customs and Border Protection. Since then the popularity of SCs and their associated products has increased steadily as evidenced by law enforcement seizures, public health information, and media reports. Amidst multiple scheduling actions placing SCs found on the illicit market in schedule I of the CSA, new versions of SCs intended to circumvent current controls continue to be encountered. MAB–CHMINACA is a SC that was associated with the hospitalization of 125 individuals around Baton Rouge and Shreveport, Louisiana in October, 2014. Since that time, multiple overdoses and deaths involving MAB–CHMINACA have been reported in Texas (in Bryan and Beaumont), Kansas (in Salina), Mississippi (in Philadelphia and Jackson), Virginia (in Hampton), and in Maryland (in Hagerstown). Specifically, in April 2015 originating in Texas, Mississippi and Alabama, the largest nationwide outbreak involving SCs was reported by multiple news outlets. State public health entities eventually reported over 2,000 overdoses and at least 33 deaths associated with abuse of SCs across at least 11 States between April and May of 2015. Of these overdoses and deaths, toxicology results have determined that a majority of overdoses from the April/May 2015 cluster were due to ingestion of MAB–CHMINACA. On April 29, 2015, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) reported multiple outbreaks of intoxications within the United States resulting from the ingestion of products believed to contain SCs. EMCDDA further reported that MAB–CHMINACA had been implicated in at least some of the cases. EMCDDA also reported two deaths involving MAB–CHMINACA, one in Hungary and the other in Japan.

5. *The Scope, Duration, and Significance of Abuse:* Following multiple scheduling actions seeking to safeguard the public from the adverse effects associated with SCs, law enforcement and health care professionals continue to encounter novel SCs thereby indicating the

continuing abuse of these substances and their associated products. After each scheduling action of a SC, drug manufacturers and suppliers are adapting at an alarming pace to switch to new SCs to circumvent regulatory controls. Even before temporary control of AB–CHMINACA, AB–PINACA, and THJ–2201 on January 30, 2015, MAB–CHMINACA was available on the illicit market. From 2014 through 2016, multiple overdoses and deaths have been attributed to the abuse of MAB–CHMINACA. From September 2014 to the present, the National Forensic Laboratory Information System (NFLIS) has documented over 1,400 reports involving MAB–CHMINACA across the following states: Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, North Dakota, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia and Wisconsin.

6. *What, if Any, Risk There is to the Public Health:* MAB–CHMINACA was associated with a cluster of 125 subjects who presented to emergency facilities within the Baton Rouge and Shreveport, Louisiana areas in October 2014. On October 29, 2014, the Secretary of the Louisiana Department of Health and Hospitals announced the addition of MAB–CHMINACA into Schedule I of the Controlled Dangerous Substances section of the Louisiana Administrative Code (LAC 46:LIII.2704.A.3). From October 2014 to the present, multiple clusters of overdoses involving MAB–CHMINACA and at least eight deaths attributed to the abuse of MAB–CHMINACA have been reported.

Adverse health effects associated with these incidents involving MAB–CHMINACA have included: Seizures, coma, severe agitation, loss of motor control, loss of consciousness, difficulty breathing, altered mental status, and convulsions that in some cases resulted in death. One case report noted the presence of MAB–CHMINACA within the body fluids and tissue samples of a recently deceased individual. A subsequent case report concluded that synergistic toxicity of MAB–CHMINACA and another SC, 5-fluoro-ADB, led to death.

The abuse of MAB–CHMINACA, a SC with no accepted medical use in treatment in the United States, poses a serious risk to both the abuser and those connected to the abuse. HHS noted that by sharing pharmacological similarities with schedule I substances (Δ9–THC, JWH–018 and other temporarily and permanently controlled schedule I SCs), SCs pose a risk to the abuser and those connected to the abuse of these dangerous substances.

7. *Its Psychic or Physiological Dependence Liability:* As stated by the HHS, MAB–CHMINACA has a pharmacological profile that is similar to other schedule I SCs. Although there are no clinical studies evaluating dependence liabilities specific for MAB–CHMINACA, the pharmacological profile of this substance strongly suggests that it possesses dependence liabilities that are qualitatively similar to, and potentially stronger than, THC (schedule I) or marijuana (schedule I).

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* MAB–CHMINACA is not an immediate precursor of any controlled substance of the CSA as defined by 21 U.S.C 802(23).

Conclusion: After considering the scientific and medical evaluation conducted by the HHS, the HHS's recommendation, and the DEA's own eight-factor analysis, the DEA finds that the facts and all relevant data constitute substantial evidence of the potential for abuse of MAB–CHMINACA. As such, the DEA hereby proposes to permanently schedule MAB–CHMINACA as a schedule I controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator of the DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(1), finds that:

1. MAB–CHMINACA has a high potential for abuse;

2. MAB–CHMINACA has no currently accepted medical use in treatment in the United States; and

3. There is a lack of accepted safety for use of MAB–CHMINACA under medical supervision.

Based on these findings, the Administrator of the DEA concludes that *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (other names: MAB–CHMINACA; ADB–CHMINACA) including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrant continued control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

Requirements for Handling MAB–CHMINACA

If this rule is finalized as proposed, MAB–CHMINACA would continue [5] to be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) MAB–CHMINACA, or who desires to handle MAB–CHMINACA, is required to be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Security.* MAB–CHMINACA is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823 and in accordance with 21 CFR 1301.71–1301.93.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of MAB–CHMINACA must be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

4. *Quota.* Only registered manufacturers are permitted to manufacture MAB–CHMINACA in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. *Inventory.* Any person registered with the DEA to handle MAB–CHMINACA must have an initial inventory of all stocks of controlled substances (including MAB–CHMINACA) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including MAB–CHMINACA) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* Every DEA registrant is required to maintain records and submit reports with respect to MAB–CHMINACA, pursuant to 21 U.S.C. 827 and 958(e), and in

[5] MAB–CHMINACA is currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h). 81 FR 6171, Feb. 5, 2016.

accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes MAB–CHMINACA is required to comply with the order form requirements, pursuant to 21 U.S.C. 828, and 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of MAB–CHMINACA must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving MAB–CHMINACA not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and could subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Executive Order 13771

This proposed rule does not meet the definition of an Executive Order 13771 regulatory action, and the repeal and cost offset requirements of Executive Order 13771 have not been triggered. OMB has previously determined that formal rulemaking actions concerning the scheduling of controlled substances, such as this rule, are not significant regulatory actions under Section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. On February 5, 2016, the DEA published a final order to temporarily place MAB–CHMINACA in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The DEA estimates that all entities handling or planning to handle this substance have already established and implemented the systems and processes required to handle MAB–CHMINACA. There are currently 16 registrations authorized to handle MAB–CHMINACA specifically, as well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. These 16 registrations represent 14 entities, of which 8 are small entities. Therefore, the DEA estimates eight small entities are affected by this proposed rule.

A review of the 16 registrations indicates that all entities that currently handle MAB–CHMINACA also handle other schedule I controlled substances, and have established and implemented (or maintain) the systems and processes required to handle MAB–CHMINACA. Therefore, the DEA anticipates that this proposed rule will impose minimal or no economic impact on any affected entities; and thus, will not have a significant economic impact on any of the eight affected small entities. Therefore, the DEA has concluded that this proposed rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* the DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:

■ a. Add paragraph (d)(72); and

■ b. Remove and reserve paragraph (h)(1).

The addition to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(72) *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide, (MAB-CHMINACA, ADB-CHMINACA) (7032)

* * * * *

Dated: January 24, 2018.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2018–01747 Filed 1–29–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–421]

Schedules of Controlled Substances: Extension of Temporary Placement of MAB–CHMINACA in Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary rule; temporary scheduling order; extension.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to extend the temporary schedule I status of a synthetic cannabinoid, *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (other names: MAB–CHMINACA; ADB–CHMINACA), including its optical, positional and geometric isomers, salts, and salts of isomers. The schedule I status of MAB–CHMINACA currently is in effect through February 4, 2018. This temporary order will extend the temporary scheduling of MAB–CHMINACA for one year, or until the permanent scheduling action for this substance is completed, whichever occurs first.

DATES: This temporary scheduling order, which extends the final order (81 FR 6171, February 5, 2016), is effective February 5, 2018 and expires on February 5, 2019. If DEA publishes a final rule making this scheduling action permanent, this order will expire on the effective date of that rule, if the effective date is earlier than February 5, 2019.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

On February 5, 2016, the Acting Administrator of the Drug Enforcement Administration (DEA) published a final order in the **Federal Register** (81 FR 6171) temporarily placing *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (other names: MAB–CHMINACA; ADB–CHMINACA), a synthetic cannabinoid (SC) substance, in schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). That final order was effective on the date of publication, and was based on findings by the Acting Administrator of the DEA that the temporary scheduling of this SC was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA, 21 U.S.C. 811(h)(2), requires that the temporary control of this substance expires two years from the effective date of the scheduling order, or on February 5, 2018. However, the CSA also provides that during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, the temporary scheduling [1] of that substance could be extended for up to one year. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services,[2] or on the petition of any interested party.

The Acting Administrator of the DEA, on his own motion pursuant to 21 U.S.C. 811(a), has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule MAB–CHMINACA. The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for this SC. On May 18, 2016, the DEA submitted a request to the HHS to provide the DEA with a scientific and medical evaluation of available information and a scheduling recommendation for MAB–CHMINACA, and in accordance with 21 U.S.C. 811(b) and (c). Upon evaluating the scientific and medical evidence, on January 19, 2018, the HHS submitted to the Acting Administrator of the DEA its scientific and medical evaluation for MAB–CHMINACA. Upon receipt of the scientific and medical evaluation and scheduling recommendation from the HHS, the DEA reviewed the documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of MAB–CHMINACA in accordance with 21 U.S.C. 811(c). The DEA published a notice of proposed rulemaking for the placement of MAB–CHMINACA in schedule I elsewhere in this issue of the **Federal Register**. If this order is made permanent, the Drug Enforcement Administration will publish a final rule in the **Federal Register**.

Pursuant to 21 U.S.C. 811(h)(2), the Acting Administrator of the DEA orders that the temporary scheduling of MAB–CHMINACA, including its optical, positional and geometric isomers, salts, and salts of isomers, be extended for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

In accordance with this temporary scheduling order, the schedule I requirements for handling MAB–CHMINACA, including its optical, positional and geometric isomers, salts, and salts of isomers, will remain in effect for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

Regulatory Matters

The CSA provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h). The Attorney General may, by order, schedule a substance in schedule I on a temporary basis. *Id.* 21 U.S.C. 811(h) also provides that the temporary scheduling of a substance shall expire at the end of two years from the date of the issuance of the order scheduling such substance, except that the Attorney General may, during the pendency of proceedings to permanently schedule the substance, extend the temporary scheduling for up to one year.

To the extent that 21 U.S.C. 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued and extended, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this extension of the temporary scheduling action. In the alternative, even assuming that this action might be subject to section 553 of the APA, the Acting Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety. Further, the DEA believes that this order

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this notice adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

[2] Because the Secretary of the Department of Health and Human Services (HHS) has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations, for purposes of this temporary scheduling order, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

extending the temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action 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. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the CRA, ''any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines.'' 5 U.S.C. 808(2). It is in the public interest to maintain the temporary placement of MAB–CHMINACA in schedule I because it poses a public health risk. The temporary scheduling action was taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h), temporary scheduling orders are not subject to notice and comment rulemaking procedures. The DEA understands that the CSA frames temporary scheduling actions as orders rather than rules to ensure that the process moves swiftly, and this extension of the temporary scheduling order continues to serve that purpose. For the same reasons that underlie 21 U.S.C. 811(h), that is, the need to place this substance in schedule I because it poses an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of this extension of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order extending the temporary scheduling order shall take effect immediately upon its publication. The DEA has submitted a copy of this temporary scheduling order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

Dated: January 24, 2018.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2018–01746 Filed 1–29–18; 8:45 am]

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

In the **List of Public Laws** printed in the *Federal Register* on January 25, 2018, H.R. 195, Public Law 115-120, was printed incorrectly. It should read as follows:

H.R. 195/P.L. 115–120

Making further continuing appropriations for the fiscal year ending September 30, 2018, and for other purposes. (Jan. 22, 2018; 132 Stat. 28)

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